

THE  
COMPANIES ACTS

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JAMES W. REID

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THE  
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THE IMPORTANT CHANGES MADE BY THE ACTS  
OF 1900 AND 1907 (NOW CONSOLIDATED IN THE  
ACT OF 1908) CLEARLY STATED FOR  
THE USE OF BUSINESS MEN.

SHOWING THE EFFECT FOR PROMOTERS, DIRECTORS,  
SECRETARIES, VENDORS, SOLICITORS, AUDITORS,  
SHAREHOLDERS, SECURED AND UNSECURED  
CREDITORS, ETC.

SEPARATELY.

SECOND EDITION

SHOWING ALSO WHERE THE CORRESPONDING SECTIONS OF  
THE ACTS OF 1900 AND 1907 ARE TO BE FOUND IN THE  
COMPANIES (CONSOLIDATION) ACT, 1908.

WITH THE FULL TEXT OF THE ACTS OF 1900 AND 1907, AND A PRINT OF  
THE PREVIOUS SECTIONS INCORPORATED WITH THEM.

BY

**JAMES W. REID,**

SOLICITOR, LONDON.

London

**EFFINGHAM WILSON,**

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1909.



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## PREFACE TO SECOND EDITION.

SINCE the first edition of this little book was published last year the Companies (Consolidation) Act, 1908, has been passed, and will come into operation on 1st April, 1909.

This Consolidation Act does not alter or affect any part of the law as set out in this book; but for convenience in reference, when consulting the text of the Consolidation Act, I have inserted a table showing where the sections of the Acts of 1900 and 1907 (and such of the sections of earlier Acts as are set out in the Appendix) are to be found in the Consolidation Act of 1908.

JAMES W. REID.

CROSBY HOUSE,  
36 AND 37, GREAT ST. HELENS,  
LONDON, E.C.,  
*March, 1909.*

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## PREFACE.

*Chapter I* will be found to deal separately with the position, as altered by the 1900 and 1907 Acts, of each of the following, viz. promoters, directors, secretaries, and other officers, vendors, shareholders, secured and unsecured creditors, solicitors, and auditors.

*Chapters II and III* deal with such of the more material parts of the Acts (relating respectively to the formation of companies and the management of companies) as could not be so conveniently treated when dealing separately with the changes affecting each person in Chapter I.

*Chapter IV* deals with some alterations relating to reconstruction, winding up, and dissolution of companies.

*The Appendix* gives the full text of the two Acts (substituting the new sections in the 1907 Act for those repealed), together with the more material sections of previous acts which are altered or referred to by the Acts of 1900 and 1907.

JAMES W. REID.

CROSBY HOUSE,  
36 AND 37, GREAT ST. HELENS,  
LONDON, E.C.,

May, 1908.



TABLE SHOWING WHERE THE CORRESPONDING SECTIONS OF THE ACTS OF 1900 AND 1907 ARE TO BE FOUND IN THE COMPANIES (CONSOLIDATION) ACT, 1908.

[illegible]



Section of 1907 Act.	Section of 1908 Act.	Section of 1907 Act.	Section of 1908 Act.
<b>21</b> . . .	<b>26</b> (3).	<b>37</b> (4) . .	<b>2</b> .
<b>22</b> . . .	<b>65</b> .	<b>38</b> . . .	<b>120</b> .
<b>23</b> . . .	<b>114</b> .	<b>39</b> . . .	<b>45</b> .
<b>24</b> . . .	<b>64, 68</b> .	<b>40</b> . . .	<b>108</b> (6).
<b>25</b> . . .	<b>69</b> (4).	<b>41</b> . . .	<b>95</b> .
<b>26</b> . . .	<b>187</b> .	<b>42</b> . . .	<b>20</b> (4).
<b>27</b> . . .	<b>188</b> .	<b>43</b> . . .	<b>34</b> (3).
<b>28</b> . . .	<b>130</b> (4), <b>137</b> (1) (c).	<b>44</b> . . .	<b>109</b> (1) (ii).
<b>29</b> . . .	<b>141</b> (1).	<b>45</b> . . .	<b>69</b> (1), <b>70</b> (1).
<b>30</b> . . .	<b>209</b> (5).	<b>46</b> . . .	<b>284</b> .
<b>31</b> (1)	<b>195</b> (4).	<b>47</b> . . .	<b>283</b> .
<b>31</b> (2) (3)	<b>223</b> .	<b>48</b> . . .	<b>282</b> .
<b>32</b> . . .	<b>279</b> .	<b>49</b> . . .	<b>276</b> (1).
<b>33</b> . . .	<b>84</b> (4).	<b>50</b> and sche- dule 3 . .	<b>42, 30</b> (2) <b>195</b> , <b>53, 58, 113</b> .
<b>34</b> . . .	<b>73</b> (3).	<b>52</b> . . .	<b>295, 285, 296</b> .
<b>35</b> . . .	<b>274</b> .	Schedule <b>1</b> .	Schedule <b>2</b> .
<b>36</b> . . .	<b>106</b> .	Schedule <b>2</b> .	<b>72, 83, 87</b> .
<b>37</b> (1) (2) (3)	<b>121</b> .		

TABLE SHOWING WHERE THE SECTIONS OF ACTS (PRIOR TO THE 1900 ACT) WHICH ARE SET OUT IN THE APPENDIX ARE TO BE FOUND IN THE COMPANIES (CONSOLIDATION) ACT, 1908.

**Act of 1862 :**

Section <b>18</b>	.	.	.
„ <b>26</b>	.	.	.
„ <b>43</b>	.	.	.
„ <b>45</b>	.	.	.
„ <b>46</b>	.	.	.
„ <b>49</b>	.	.	.
„ <b>138</b>	.	.	.
„ <b>142</b>	.	.	.
„ <b>143</b>	.	.	.
„ <b>161</b>	.	.	.
„ <b>192</b>	.	.	.

**Act of 1867 :**

Section <b>25</b>	.	.	.
„ <b>38</b>	.	.	.
„ <b>39</b>	.	.	.

**Act of 1870 :**

Section <b>2</b>	.	.	.
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**Act of 1880 :**

Section <b>7</b> (5)	.	.	.
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**Act of 1890 :**

Section <b>29</b> (2)	.	.	.
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**Act of 1908 :**

Section <b>16</b> .	
„ <b>26</b> .	
„ <b>100</b> and <b>101</b> .	
„ <b>75</b>	
„ <b>75</b> .	
„ <b>64</b> .	
„ <b>193</b> .	
„ <b>195</b> .	
„ <b>195</b> .	
„ <b>192</b> .	
„ <b>16</b> and <b>17</b> .	
„ <b>88</b> (1) (b)	
„ <b>81</b> .	
„ <b>65</b> .	
„ <b>120, 158</b>	
„ <b>242</b> (6).	
„ <b>283</b> .	

# CONTENTS.

INTRODUCTION—	PAGE
Most Important Changes introduced by Acts . . .	1
Effect of Provisions as to Minimum Subscription . . .	3
CHAPTER I.	
OF THE ALTERED POSITION OF:	
Promoters . . . . .	5
Directors . . . . .	7
Secretary . . . . .	18
Other Officers . . . . .	22
Vendors . . . . .	22
Shareholders . . . . .	25
Secured and Unsecured Creditors . . . . .	27
Solicitors . . . . .	29
Auditors . . . . .	30
CHAPTER II.	
OF THE FORMATION OF THE COMPANY:	
The use of the word “Limited” . . . . .	33
The Private Company . . . . .	33
Commissions, Discounts, etc. . . . .	34
The Prospectus or Statement in lieu thereof . . . . .	36
Restrictions on Commencement of Business and the Exercise of Borrowing Powers . . . . .	41
CHAPTER III.	
OF THE MANAGEMENT OF COMPANIES:	
Registration of Mortgages and Charges . . . . .	44
The Statutory Meeting . . . . .	47
The Annual Summary . . . . .	49
CHAPTER IV.	
OF THE WINDING UP OF COMPANIES:	
Reconstructions and Amalgamations in the Winding up of Companies . . . . .	51
Winding up and Receivers and Managers . . . . .	52
Dissolution of Companies . . . . .	55
APPENDIX:	
(1) The full text of the Acts . . . . .	57
(2) The sections of previous Acts which are altered or referred to . . . . .	102





# THE COMPANIES ACTS, 1900 AND 1907.

## INTRODUCTION.

THE most important changes introduced by the Companies Act, 1900, relate to the following :

- (1) Restrictions on going to allotment.
- (2) Restrictions on commencement of business.
- (3) Enabling payment of commissions and discounts.
- (4) Disclosures required in the Prospectus.
- (5) Additional requirements for the first statutory meeting of the Company.
- (6) The Registration of Mortgages and Charges.
- (7) Additional requirements in the Annual Summary to be forwarded to the Registrar of Joint Stock Companies.
- (8) The compulsory appointment of Auditors of all Limited Companies.
- (9) Enlargement of the means for carrying out Reconstructions and Amalgamations in the winding up of Limited Companies.

The most important changes introduced by the

Companies Act, 1907, so far as they affect Companies registered in England, relate to the following :

- (1) The creation of a new class of Company called a Private Company.
- (2) Obligation on Companies (other than Private Companies) which do not issue a Prospectus to file a Statement in lieu of Prospectus.
- (3) Obligation on Companies (other than Private Companies) to file a Statement of Affairs in shape of a detailed Balance Sheet.
- (4) Effect of Floating Charge.
- (5) Register of Mortgages to be more complete and to be open to inspection of everyone.
- (6) Registration of enforcement of Security.
- (7) Statement as to Commissions and Discounts.
- (8) Specific performance of contract to subscribe for Debentures.
- (9) Power of the Court to grant relief to Directors in certain cases.
- (10) The position of a Liquidator in a Voluntary Winding up.
- (11) Filing of Accounts by Receivers and Managers.
- (12) Amendment in Law of Dissolution of Companies.

It is proposed to treat of these matters in their place in the subsequent chapters; but it may be convenient, in the first place, to give the outline of the restrictions on going to allotment, and then in separate statements to show the provisions affecting each of the following persons separately :

Promoters.

Directors.

Secretaries and other officers.

Vendors.

Shareholders.

Creditors, secured and unsecured.

Solicitors.

Auditors.

The Act of 1900 provides that no allotment shall be made, except upon applications for the whole of the shares offered, unless a Minimum Subscription fixed in the Memorandum or Articles and named in the Prospectus has been subscribed, and the application money, which must not be less than 5 per cent., has been received by the Company (Section 4 of the Act of 1900).

Section 1 (3) of the Act of 1907 makes this provision applicable to the first allotment of shares by Companies which do not issue a Prospectus (except Private Companies or Companies which allotted shares prior to the Act).

Besides the most important changes introduced by the Act of 1907, which have been alluded to above (p. 2), there are a great many other changes which, though important in themselves, are not likely to be constantly met with in the daily routine of Company administration.

Such, for instance, are :

- (a) Payment of Interest out of Capital (Section 9).
- (b) The validity of Perpetual Debentures (Section 14).
- (c) Power to re-issue redeemed Debentures (Section 15).

- (d) Contributions under Directors' Liability Act, 1890 (Section 33).
- (e) Requirements as to Companies established outside the United Kingdom (Section 35).
- (f) Validity of Debentures to bearer in Scotland (Sect. 36).
- (g) Re-organisation of Capital (Section 39).

It seems better not to increase the size and scope of this small book by comments on the above and some other matters included in the Act of 1907. The Sections alluded to will be found printed in the Appendix.

Sections 14 and 15 of the Act of 1907 came into operation on 28th August, 1907, and the rest of that Act comes into operation on 1st July, 1908.

## CHAPTER I.

### OF THE ALTERED POSITION OF DIRECTORS AND OTHERS.

It is proposed in this chapter to deal separately with the position, as altered by the Acts of each of the following, viz. :—Promoters, Directors, Secretaries and other officers, Vendors, Shareholders, Secured and Unsecured Creditors, Solicitors, and Auditors.

#### PROMOTERS.

The Acts make it necessary to state in the Prospectus the amount paid within the two preceding years or intended to be paid to any Promoter, and the consideration for any such payment [Section 10 (1) (*j*) of 1900 Act as amended by Section 2 (1) (*j*) of 1907 Act].

The Courts have steadily refused to define exactly what constitutes a Promoter, because it has evidently been the view of the Judges that if the position of a Promoter were exactly defined it would be the special effort of the disingenuous Promoter to get as near to

the function as possible without incurring the responsibility.

The well-known description of a Promoter given by the late Lord Justice Bowen, in the case of *Whalley Bridge v. Green* (5 Q.B.D. 109), was as follows:—"The term 'Promoter' is a term not of law, but of business, usefully summing up in a single word a number of business operations, familiar to the commercial world, by which a Company is generally brought into existence."

The way in which a promoter has been remunerated in the past has too often been a secret, studiously withheld from the Shareholders. The result of this has often been over-capitalisation to provide for the payment of profits to Promoters or Promoting Syndicates.

The disclosure of the profit made by the Promoter must now take place on the face of the Prospectus, and this will put the intending Shareholder in possession of the facts, and enable him to judge more readily what is the real nature of the transaction which has brought about the formation of the Company.

It is to be noticed from the wording of Section 10 of the Act of 1900 that its provisions apply whether the Prospectus is issued by or on behalf of the Company, "or by or on behalf of any person who is or has been engaged or interested in the formation of the Company."

No specific penalty is imposed for non-compliance with the requirements of Section 10 as to the Prospectus. The remedy of any aggrieved Share-

holder who has subscribed for shares on the faith of such a Prospectus will be an action for damages.

This action for damages can be sustained against any person responsible for the issue of the Prospectus ; so that the Promoter (as well as the Directors) will incur this liability, and he can only rid himself of it by proving that he was not aware of the fact or facts which have not been disclosed, or that the non-compliance arose from an honest mistake on his part.

Promoters may also become criminally liable under Section 28 of the Act of 1900, if they make themselves responsible knowingly for any material false statement in any report, return, or document required for purposes of the Act.

Promoters may also become liable for failure to file prospectus [Section 3 of 1907 Act].

What Promoters may do in the way of paying Commissions will be found under the head of "Vendors," at pages 24 and 25.

## DIRECTORS.

There are various provisions in the Act of 1900 which directly affect Directors.

In the first place, important provisions are made by Section 2 of that Act, placing restrictions on the appointment of Directors, and upon the advertisement of the names of the Directors or proposed Directors.

The Section only applies to Companies which are registered after 1st January, 1901, and to a



Prospectus issued within one year after the date at which the Company is entitled to commence business.

In Companies which fall within this description, no person shall be capable of being appointed a Director by the Articles of Association, or be capable of being named in the Prospectus as a Director or proposed Director, unless, before registration of the Articles or publication of the Prospectus (as the case may be), he has, by himself or his agent authorised in writing, done the following:—

- (1) Signed and filed with the Registrar a consent to act as Director; and—
- (2) Has either signed the Memorandum of Association for not less than his qualification shares, or signed and filed with the Registrar a contract to take from the Company and “to pay for” his qualification shares.

The Act does not compel a Director to hold any qualification shares. That is left to be dealt with in the Articles of Association. What the Act does is to enact that when the Articles provide that a Director must have certain qualification shares he shall at least make himself liable to take them.

In the case of Companies registered on or after the 1st of July, 1907, whether they invite subscriptions from the public for shares or not, care must be taken to see that written consents to act are signed by the Directors in every case; and that, if there be any provision in the articles for the Directors to take qualification shares, they should sign consents to take

such shares, or should sign the Memorandum of Association for the full number of their qualification shares. These written consents must be filed with the Registrar before any Prospectus is issued, or before the Statement in lieu of Prospectus is filed.

In cases where the Directors are to hold qualification shares and are named in the Articles of Association (which have to be filed with the Memorandum before the Company can come into existence), it will probably be necessary for Directors to sign the Memorandum for the full number of their qualification shares. The reason for this is that as the contract is to take the shares from the Company it must presumably be made with the Company, and as the Company is not in existence until it is registered, the Directors, who are named in the Articles, can only make the contract to take their qualification shares by signing the Memorandum of Association.

By Section 3 of the Act of 1900 the duty is imposed upon every Director who is by the regulations of the Company required to hold a specified share-qualification to obtain his qualification within two months after his appointment, or such shorter time as may be fixed in the Articles.

By the same Section it is further provided that the office of Director of the Company shall be vacated in the following events :

- (1) If he does not within two months from the date of his appointment (or within such shorter time as may be fixed by the Articles) obtain his qualification ; or—

- (2) If after expiration of the two months (or shorter time, as is prescribed by the Articles) he ceases to hold his qualification shares.

A Director vacating office is incapable of being re-appointed until he has obtained his qualification shares [Section 3 (2) of the Act of 1900].

This Section 3 applies to all Directors of all Companies, whether formed before or after the commencement of the Act. The effect of which is to fix the time (viz. within two months of appointment) within which a Director must take up his qualification shares (if any), and, as modified by Section 34 of the Act of 1907, to impose a fine of not exceeding £5 per day for every day during which a Director acts without being qualified, which means every day between the date of disqualification and the last day on which it is proved that he acted as a Director [Section 34 of the 1907 Act].

Under Section 4 of the Act of 1900, Directors are made jointly and severally liable to repay the money paid by Shareholders on application for their shares, in cases where the Company does not get the minimum share capital subscribed to enable it to go to allotment.

None of the preliminary expenses can be paid out of this application money, if there be a failure to go to allotment, for the whole has to be returned to the Shareholders. The result will be that the Promoters or Vendors will have in each case to pay the preliminary expenses. Directors will therefore have to see that either these preliminary expenses (such as

the cost of printing and stamp duties and fees) are paid or provided for by the Promoters and Vendors, or that sufficient applications for shares are obtained and application moneys paid and shares allotted before going to the public for subscriptions; because the money paid on the application by the public for shares cannot be used to defray preliminary expenses in a case where the Company does not get the minimum subscription to enable the Directors to go to allotment.

Under Section 5 of the Act of 1900, Directors become liable, if they contravene, or permit or authorise the contravention, of any of the provisions of the Act with respect to allotment, to compensate the Company and the Allottee respectively for any loss, damages, or costs sustained thereby. The proceedings to recover under this Section must be commenced within two years from the date of allotment.

A Director becomes liable to a fine of £50 a day (in addition to any other liabilities) if he has made himself responsible for any commencement of the business of the Company, or any exercise of its borrowing powers, before the issue by the Registrar of his certificate that the Company is entitled to commence business, as provided in Section 6 of the Act of 1900, and more fully dealt with at page 41.

By Section 7 of the Act of 1900, the Company must within one month after any allotment of shares, file with the Registrar—

- (1) A return of the allotments with names and particulars of the allottees and the amounts paid or payable on each share; and—

- (2) “In the case of shares allotted in whole or  
“in part for a consideration other than  
“cash, a contract in writing constituting  
“the title of the allottee to such allotment,  
“together with any contract of sale, or  
“for services or other consideration in  
“respect of which such allotment was  
“made, such contracts being duly stamped,  
“and a return stating the number and  
“nominal amount of shares so allotted, the  
“extent to which they are to be treated  
“as paid up, and the consideration for  
“which they have been allotted.”

By Section 6 of the Act of 1907, where such a contract as is mentioned in the lastly quoted Section is not put into writing, the Company must within a month file with the Registrar the prescribed particulars of the contract.

Every Director, Manager, Secretary, or other officer, who is knowingly a party to any default under these Sections, is liable to a fine of £50 a day [Section 7 (2) of the 1900 Act and Section 6 of the 1907 Act].

By Sub-section 4 of this Section the Court is enabled to grant relief in cases of omission to file the contract if satisfied (1) that omission was accidental, (2) that it was due to inadvertence, (3) that it is just and equitable to grant relief.

Under Section 9 each Director is required to sign the Prospectus, which must be filed with the Registrar of Joint Stock Companies.

Under Section 3 of the Act of 1907, every person

who is knowingly a party to the issue of a Prospectus without a copy being filed with the Registrar is liable to a fine of £5 a day from the date of the issue of the Prospectus until a copy of it has been so filed.

Under Section 5 of the Act of 1907, every Director who is knowingly a party to default in issuing certificates within two months after the allotment, or two months after the transfer of shares, debentures or debenture stock (unless the conditions of the issue otherwise provide), is liable to a fine not exceeding £5 a day during continuance of the default.

Under Section 10 of the 1900 Act, Directors are responsible for the requirements of the section as to the full disclosure which, it dictates, shall be made in the Prospectus. But in the event of non-compliance with these requirements, a Director will escape liability if he proves that—

- (a) As regards any matter not disclosed he was not cognisant thereof; or—
- (b) the non-compliance arose from an honest mistake of fact on his part.

If there be any provision in the Articles as to remuneration of Directors, this must be disclosed in the Prospectus [Section 10 (1) (b)].

If a Director fails to disclose in the Prospectus [as required by Section 10 (1) (m), amended by Section 2 (1) of the 1907 Act] the nature and extent of the interest of every Director in the promotion of, or in the property proposed to be acquired by, the Company (or where the interest of the Director consists in being a partner in a firm, the nature and



extent of the interest of the firm), with a statement of all sums to be paid to him in cash or shares by any person for services rendered by him in connection with the formation of the Company, then no such Director shall incur any liability therefor, unless it be proved that he had knowledge of the matters not disclosed.

Under Section 11 of the 1900 Act, Directors are unable, prior to the statutory meeting, to vary the terms of a contract referred to in the Prospectus.

Under Section 12 of the same Act as amended by Section 22 of the Act of 1907, Directors are bound to hold a Statutory Meeting within not less than one month nor more than three months from the date when the company is entitled to commence business, and they must file a report and issue it to the Shareholders at least seven days before the meeting is held, and in default the Court may penalise in costs any Director.

This report by the Directors to the Statutory Meeting must state :

- (a) The total shares allotted, distinguishing those not payable wholly in cash, with full particulars.
- (b) The total amount of cash received in respect of such shares.
- (c) An abstract of receipts of the Company on account of its capital, whether from shares or debentures, and of the payments made thereout, and an account or estimate of preliminary expenses.
- (d) The names, addresses, and descriptions of the



Directors, Auditors, Manager, and Secretary of the Company.

- (e) Particulars of any contract the modification of which is to be submitted to the meeting for approval, with particulars of the proposed modification. The Directors must also produce to the Statutory Meeting a list of the names, descriptions, and addresses of members of the Company and the number of shares held by them respectively, which is to be open to any member during the meeting.

By Section 22 of the Act of 1907, the Abstract (c) must show under distinctive headings the Company's receipts from (1) Shares, (2) Debentures, and (3) other sources, the payments made thereout, and particulars of the balance in hand.

A Private Company under the Act of 1907 is not required to send out or to file this Report, but is not exempted from holding the Statutory Meeting.

By Section 19 (5) of the Act of 1907, a Director may become liable to a fine not exceeding £50 for knowingly issuing or publishing an unsigned balance sheet, or any copy of a balance sheet, without a copy of the Auditors' Report being attached or referred to.

Under Section 13 of the Act of 1900, Directors are bound to call a General Meeting of the Company upon the requisition of the holders of not less than one tenth of the issued capital of the Company.

Under Section 18 of the Act of 1900, a Director who knowingly and wilfully fails to register the Mortgages or Charges of the Company specified in

the Section will render himself liable to a fine of £100 (in addition to any other liability); and the Director will become liable to a further penalty of £100 (in addition to any other liability) if he knowingly and wilfully authorises or permits the delivery of any Debenture or Certificate of Debenture Stock without a copy of the certificate of the registration thereof being endorsed upon it.

In addition to the above penalties a Director may under Section 10 (Sub-section 6) of the Act of 1907, become liable to a fine of £50 a day for every day during which the Company makes default in sending to the Registrar for registration the particulars of every mortgage or charge created by the Company, and of the issues of debentures of a series requiring registration under that Section if the Director is knowingly a party to the default, unless the registration has been effected on the application of some other person.

Also under Section 12 (2) of the Act of 1907, a Director may become liable to a penalty of £50 a day for being knowingly a party to default in registering within three months from 1st July, 1908, a statement of the total debts secured by Mortgages or Charges created before that date which would have required to be registered if created after the commencement of the Act; and by Section 18 of the same Act he is liable to penalties if he refuse inspection of the Debenture Register.

The effect of Section 20 of the Act of 1900 is to enact that a Register of the names, addresses, and occupations of its Directors or Managers must be

kept by every Company (whether formed before or after the Act), and a copy must be sent to the Registrar, and a notification of any change in the Directors or Managers; and for any default a penalty of £5 a day is imposed upon the Company, and upon any Director or Manager who shall knowingly and wilfully authorise or permit the default.

Under Section 28 of the Act of 1900, a Director who wilfully makes a statement false in any material particular (knowing it to be false) in any return, report, certificate, Balance Sheet, or other document required by the Act, becomes liable to imprisonment for a term not exceeding two years and to a fine of any amount, in lieu of, or in addition to, the imprisonment.

Under Section 24 of the Act of 1907, Directors who are knowingly party to default in holding any Annual General Meeting under the provisions of that Section are liable to a fine not exceeding £50.

Under Section 32 of the Act of 1907, the Court has power to grant relief to Directors in certain cases of negligence or breach of trust where it appears to the Court that the Director is, or may be, liable in respect of the negligence or breach of trust, but has acted honestly and reasonably and ought fairly to be excused.

It is to be observed that this Section only applies to Directors and not to other officers of the Company.

## SECRETARY.

The Secretary may become liable under Sections 6 and 7 of the Act of 1900, as amended by Section 6 of the 1907 Act, to the same penalties of £50 a day as Directors (as explained at pages 11 and 12) if he is responsible for a contravention of those sections.

Under Section 3 of the Act of 1907, the Secretary may become liable to a penalty of £5 a day for failing to file a Prospectus before it is issued.

Under Section 10 of the Act of 1900, the Secretary may, if he has made himself responsible for the Prospectus, become liable in the same way as has been already described in the case of Directors (pages 13 and 14).

Under Section 18 of the Act of 1900, and Sections 5 (2), 10 (6), and 12 (2) of the Act of 1907, the Secretary may also be liable to the same penalties under the circumstances above described with reference to Directors (pages 13 to 16).

Under Section 28 of the Act of 1900, the Secretary, if he acts knowingly and wilfully, may also be liable to imprisonment and fine under the circumstances above described with reference to Directors (page 17).

Under Section 19 (5) of the Act of 1907, the Secretary may become liable to the same fine as a Director for knowingly issuing an unsigned Balance Sheet or one without the Auditor's Report attached.

Under Section 24 of the Act of 1907, the Secretary may become liable to the same fine as a Director for

default in holding any Annual General Meeting as before mentioned in the case of Directors.

The special duties of the Secretary under the Acts are, to assist the Directors in the business following :

- (1) Observing the conditions and restrictions on the allotment of shares, and on the commencement of business and exercising of borrowing powers.
- (2) Filing with the Registrar the return of the allotment of shares, and filing contracts dealing with fully paid or partly paid shares, and under Section 6 of the Act of 1907, filing particulars of such contracts when not reduced to writing.
- (3) Attending to the signature by the Directors of, and the filing of, the Prospectus, or statement in lieu of Prospectus, under the Act of 1907.
- (4) Calling the first Statutory Meeting, and seeing that the Directors' Report for that meeting is properly prepared, having regard to Section 12 of the 1900 Act, and Section 22 of the 1907 Act, is duly certified by two Directors and by the Auditors, is forwarded to each Shareholder in due time, and is filed with the Registrar.
- (5) Attending to the registration of Mortgages and Charges, under Section 10 of the Act of 1907, with the Registrar of Joint Stock Companies, and seeing that the certificate of the Registrar of such registration is

obtained, and that a copy of the certificate so given is endorsed on every Debenture or Certificate of Debenture Stock which is issued by the Company.

- (6) To see that the Company keeps a copy of every Mortgage or Charge filed with the Registrar, such copies to be open to inspection by Members and Creditors free of charge, and to other persons on payment of a fee not exceeding one shilling.

Besides the Register of Mortgages and Charges kept by the Registrar, the particulars of which have to be supplied to the Registrar by the Company's Secretary [Act of 1907, Section 10 (6)], it will still be the duty of the Secretary to keep as heretofore at the Company's registered offices a Register, under Section 43 of the Companies Act, 1862, of all Mortgages and Charges specifically affecting property of the Company, and to enter therein a short description of the property mortgaged or charged, the amount of the charge created, and the names of the mortgagees or persons entitled to the charge.

The difference between these two Registers is explained hereafter in Chapter III.

Under Section 18 of the 1907 Act, the Secretary may become liable to the same penalties as a Director for refusing inspection of the Register of Debenture Holders.

- (7) It is also the duty of the Secretary to make out, and sign and file with the Registrar, an Annual Summary of all members of the Company, and of the shares held by



each of them. In addition to the particulars included in the Summary (which is requisite under Section 26 of the Companies Act, 1862), the Summary must, under Section 21 of the Act of 1907, include a statement in the form of a Balance Sheet containing a Summary of Capital and Liabilities and Assets, and the Summary has to be so framed as to distinguish between shares issued for cash and shares issued otherwise than for cash, or partly for cash. This Summary must specify the total debt due from the Company in respect of Mortgages and Charges (which are of the kind which would require registration under the new Act), and must also specify the names and addresses of persons who are the Directors of the Company. Under Section 7 of the Act of 1907 this Summary must state the total amount paid by way of Commission in respect of shares or debentures or discounts on debentures.

- (8) Again, it is a further duty (under Section 20 of the 1900 Act) of the Secretary of every Company to keep at the registered office of the Company (1) a Register containing the names, addresses, and occupations of the Directors and Managers; (2) to send a copy of the Register to the Registrar; and (3) to notify to the Registrar any change in the Directors or Managers.



### OTHER OFFICERS.

The only other officer who appears to be specifically recognised by the Acts is the Manager. He is made responsible, under Section 7 of the Act of 1900, under a penalty of £50 a day, if he is knowingly a party to any default in making the returns, or filing the contracts under that Section (see page 62).

The Manager may, under Section 19 of the Act of 1900, sign the Annual Summary instead of the Secretary doing so.

Under Section 18 of the Act of 1900 and Section 10 of the Act of 1907, the Manager is mentioned as liable to the same penalties under the circumstances above described with reference to Directors (pages 15 and 16).

Other Sections of the Act of 1907, in which the Manager is specifically mentioned as liable to similar penalties as a Director, are the following : *Section 12* dealing with the registration of secured debts created before 1st January, 1901 ; *Section 18*, dealing with any refusal to allow inspection of the Register of debenture holders ; and *Section 19*, dealing with the circulation of any unsigned balance sheet.

The Managers are also (as before explained) to be included in the list of Directors and Managers kept at the Company's office and sent to the Registrar.

### VENDORS.

Section 10 (1) (*f*) of the Act of 1900 as amended by Section 2 of the Act of 1907, provides that the

Prospectus must state the names and addresses of the Vendors of any property to be paid for by the Issue, or of which the purchase is not completed at the date of the Prospectus, and the amounts in cash, shares, or debentures payable to the Vendor and to each of the Vendors of any such property, provided that where the Vendors or any of them are a firm, the members of the firm shall not be treated as separate Vendors.

Section 10 (2) of the Act of 1900 provides that the following shall be deemed Vendors—viz. every person who has entered into any contract, absolute or conditional, for the sale or purchase, or of any option of purchase, of any property to be acquired by the Company in any case where—

- (a) The purchase-money is not fully paid at the date of publication of the Prospectus ; or—
- (b) The purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the Prospectus ; or—
- (c) The contract depends for its validity or fulfilment on the result of such issue. .

This is, of course, not an exhaustive description or definition of a “Vendor,” but it brings within the requirements of this section persons who might not otherwise be held to be Vendors.

The meaning of this description of a Vendor will be made clearer by an illustration. If A. has contracted to sell property to B., and B. has contracted to re-sell it to the Company, A. is, under the definition in the new Act, just as much a Vendor as B.

(1) if the purchase-money has not been fully paid to A. at the date of publication of the Prospectus ; or (2) if any part of his purchase-money is to be paid out of the proceeds of the issue offered for subscription by the Prospectus ; or (3) if the contract depends either for its validity or fulfilment on the result of such issue.

The effect of this is that the Prospectus must disclose the name and address of A. also, or of any Vendor to A. under similar circumstances, and the amount payable to him or them in cash, shares, or debentures. This means roughly, that all intermediate profits will have to be disclosed back to some person who has made an out-and-out sale, completed and in no way dependent on the formation of the Company.

In a case where the property to be acquired by a Company is to be taken on lease, the expression "Vendor" is also to include the lessor, and the expression "purchase-money" is also to include the consideration given for the lease, and the expression "sub-purchaser" is to include sub-lessee [Section 10 (3) of the Act of 1900].

There is nothing in the Acts to prevent the Vendor from paying commissions for the underwriting of shares, so long as the payment is not made out of the capital moneys received from the Company. It will be necessary, however, to disclose in the Prospectus the rate of commission paid ; or if this be not done, then the underwriting contract must itself be stated in the Prospectus.

Section 8 (1) of the 1907 Act now definitely

authorises a Vendor or Promoter who receives payment from a Company, in cash or shares, to apply any part in payment of any commission such as a Company may pay under Section 8 of the 1900 Act (see p. 82).

The safer plan will be to disclose the underwriting contracts in the Prospectus in any case, whether the rate of commission for underwriting be stated or not. However, it is only "material" contracts which have to be disclosed, and it is difficult to see how the underwriting contract can be any longer material if the Prospectus has stated the rate of the commission to be paid under such contract.

### SHAREHOLDERS.

The principal way in which Shareholders are affected by the Acts is that they get, under the requirements in the Prospectus, more complete disclosure of the facts which are material for them to know before they subscribe for shares. This will be dealt with more fully in the next chapter, under the heading of "Prospectus." Shareholders, also, in Companies limited by shares, which are registered on and after January 1st, 1901, get the benefit of some early investigation into the position of the Company at the first Statutory Meeting of the Company, which (under Section 12 of the Act of 1900) is to take place within not less than one month nor more than three months from the date at which the Company is entitled to commence business.

The Report of the Directors, which by the last-

mentioned Section has to be forwarded to every Member, must also give information as to the shares allotted, the consideration for which they have been allotted, and the total cash received (see page 14).

Shareholders can also compel the holding of the Statutory Meeting by petitioning the Court for a winding up. Some comments upon this will be found in Chapter III, under the heading of "Statutory Meeting."

Shareholders also get the benefit of provisions enabling them to compel the Directors to hold an Extraordinary General Meeting, if the holders of not less than one tenth of the issued capital of the Company sign a requisition demanding a meeting. If the Directors neglect for twenty-one days to hold the meeting the requisitionists, or a majority of them in value, may themselves convene the meeting [Section 13 (3) of the Act of 1900].

This privilege applies to Companies whether registered before or after January 1st, 1901, and it applies notwithstanding the fact that by the terms of the Articles a larger amount than one tenth of the issued capital may be necessary to requisition a meeting.

The right of a Shareholder to repudiate the allotment of shares to him, on the ground that the minimum subscription was not obtained, is limited to one month after the Statutory Meeting.

After that month has expired he will be too late to repudiate upon that ground; but he will have a right against the Directors personally for damages, if the proceedings to recover such damages are com-

menced within two years from the date of the allotment. After the two years have expired without proceedings being commenced, this right of action will be lost [Section 5 (2) of the Act of 1900].

Under Section 23 of the Act of 1907 Preference Shareholders and Debenture Holders of any Company registered on or after July 1st, 1908, other than a private company (as defined by Section 37 of the Act of 1907) will have the same rights as ordinary Shareholders with regard to receiving and inspecting Balance Sheets and Reports of Auditors and other reports.

Under Section 19 (3) of the Act of 1907 any Shareholder is entitled to inspection of Balance Sheet and Auditors' Reports, and is entitled to be furnished with a copy of the Balance Sheet and Auditors' Report at a charge not exceeding 6d. per 100 words.

## SECURED AND UNSECURED CREDITORS.

Prior to the Act of 1900 it was not necessary for the security of a Mortgagee or Debenture Holder to have his Mortgage or Debenture registered or recorded in any way.

There is the provision in Section 43 of the Act of 1862 (before alluded to when dealing with the duties of a Secretary), under which the Company has to keep a Register of Mortgages, but failure to register under that Section does not invalidate the security.



Under Section 10 of the Act of 1907, replacing Section 14 of the Act of 1900, every Mortgage or Charge which comes under the provisions of that Section (to be further explained in Chapter III) shall be void against the liquidator and any creditor of the Company, unless filed with the Registrar within twenty-one days after the date of its creation, but without prejudice to any obligation for repayment of the money thereby secured.

These Sections apply to all Companies whenever registered, and to any of the Mortgages or Charges specified in the Section 12 of the 1900 Act if created between January 1st, 1901, and June 30th, 1907, and to any Mortgages or Charges specified in Section 10 of the Act of 1907, if created on or after July 1st, 1907.

It should be noticed that failure to register in the prescribed manner makes the Mortgages or Charges void against two persons—(1) the liquidator, and (2) any creditors of the Company; yet this avoidance is without prejudice to the Company's obligation to repay. The result of this is that the holder of a Mortgage or Charge which comes within these Sections, and yet has not been registered, will be in the position of an unsecured creditor.

By Section 10 of the Act of 1907, a wider protection is given to persons about to give credit to a Company, as they will get the opportunity by inspection of the Register of finding out the total amount of the charges on the Company's property.

These provisions are a great improvement on the state of things under the Act of 1862, under which only a shareholder or existing creditor could get



inspection of the Register of Mortgages kept at the Company's offices.

Under Section 11 of the Act of 1907, appointments of Receivers and Managers must also be entered upon the Register.

Under Section 18, Debenture Holders have the right to inspect the Register of Debenture Holders and to have copies thereof.

### **SOLICITORS.**

The provisions of the Act of 1900 which chiefly affect a Solicitor's liability are the following :

Under Section 1 the Statutory declaration proving compliance with all the requisitions of the Companies Acts in respect of registration, "and matters precedent and incidental thereto," may be made by either the Solicitor engaged in the formation of the Company or by the Secretary or a Director, if named in the Articles.

In cases where Table A of the Companies Act, 1862, is adopted instead of Articles, and in cases where neither Director nor Secretary are appointed in the Articles, it will be necessary for the Solicitor to make the declaration. If the Solicitor should wilfully make a false statement in this declaration he will be liable to imprisonment and fine under Section 28 of the Act of 1900, as explained when dealing with Directors (page 17).

The Solicitor may also become liable for making a false statement in the statement in lieu of Prospectus, under Section 1 of the Act of 1907. The form in

the First Schedule to this Act includes the Solicitor as one of the persons who may verify the statement in lieu of Prospectus.

Under Section 2 of the Act of 1900, if the Solicitor be the person who applies to register the Company, he has to deliver to the Registrar a list of the persons who have consented to be Directors, and the Solicitor will be liable to a fine not exceeding £50 if the list contains the name of any person who has not consented.

Under Section 6 of the Act of 1900, the Solicitor may, if he be "responsible for the contravention" of that Section in commencing business or exercising borrowing powers before the Company is entitled to do so, become liable to a fine of £50 for every day during which the offence continues.

### AUDITORS.

The effect of the Act of 1900 is to make the employment of Auditors compulsory, to put their appointment in the control of the Shareholders, and make the Auditors report to, and report specifically in the interests of, the Shareholders.

It applies to all Companies whatever the date of formation.

Section 10 (1) (l) of the Act of 1900, now Section 2 (1) (l) of the Act of 1907, enacts that the Prospectus shall state the names and addresses of the Auditors (if any).

Section 21 of the Act of 1900 makes the appoint-

ment of Auditors at each Annual General Meeting compulsory.

Section 19 (3) of the 1907 Act provides that the Auditors' report shall be attached to the Balance Sheet, or there shall be inserted at the foot of the balance-sheet a reference to the report, and the report shall be read before the Company in General Meeting and shall be open to inspection by any Shareholder.

The Directors may, before the Statutory Meeting, appoint Auditors; and if they do so before the Prospectus is issued, then the names and addresses of the Auditors shall appear upon the Prospectus.

The Auditors, if appointed by the Directors before the first Statutory Meeting, shall hold office until the first Annual Meeting, unless previously removed by resolution of Shareholders in General Meeting.

The only other case in which the Directors have any power to appoint Auditors is to fill casual vacancies; and it is provided by the Act of 1900 that, while any vacancy continues, the surviving or continuing Auditor (if any) may act.

If an appointment of Auditors is not made at an Annual General Meeting, the Board of Trade may, on the application of any member, appoint an Auditor and fix his remuneration.

In the case of the first Statutory Meeting, the Auditors (if any) must [by Section 12 (3) of the 1900 Act] certify the Directors' report as to allotments, cash received therefor, and the receipts and payments on Capital Account.

By Section 19 of the Act of 1907, now substituted

for Section 23 of the Act of 1900, the Auditors are given full powers to examine the Company's books, and to call for any information, and must report on the Accounts and on the Balance Sheet to the General Meeting, and must state whether, in their opinion, the Balance Sheet exhibits a true and correct view of the Company's affairs, not only as shown by the books, but also "according to the best of their information, and the explanations given to them."

The Auditors, by Section 28 of the Act of 1900, will be criminally responsible for any wilful false statement made by them in any certificate or report.

These Sections apply to all Companies, whatever the date of their registration.

## CHAPTER II.

### OF THE FORMATION OF THE COMPANY.

It is only possible in the limits of this book to give quite a short review of the provisions of the Acts as they affect the formation of the Company.

#### USE OF THE WORD "LIMITED."

Section 48 of the Act of 1907 enacts that if persons trade or carry on business under any name or title of which "Limited" is the last word, such persons (unless duly incorporated with limited liability) shall be liable to a penalty not exceeding £5 for every day upon which such name or title has been used.

#### THE PRIVATE COMPANY.

The Act of 1907 creates an entirely new kind of Company, viz., the Private Company.

Such a Company may be registered by only two persons, if by its Articles of Association it (1) restricts the right to transfer its shares, and (2) limits the number of its members (exclusive of persons who

are in the employment of the Company) to fifty, and (3) prohibits any invitation to the public to subscribe for any shares or debentures of the Company (see Section 37 of the Act of 1907).

Such a Company may be found most useful by partners who desire to have the benefit of limited liability, but do not desire to make public in the statement in lieu of Prospectus (which is required by Section 1 of the Act of 1907 to be filed with the Registrar by Companies other than Private Companies) the particulars required of Public Companies, and do not desire to make public a balance sheet (audited by the Company's Auditors) containing a summary of the Company's capital, and its liabilities and assets.

An existing company which wishes to avoid the above-mentioned obligations should, before the 1st of July, 1908, alter its Articles of Association by special resolutions so as to bring itself within the definition of a Private Company as explained above.

### COMMISSIONS, DISCOUNTS, ETC.

Section 8 of the Act of 1900 made it lawful for a Company to pay commissions for underwriting, or procuring underwriting, of the capital of the Company, provided that these three conditions were fulfilled: (1) That the shares were offered for public subscription; (2) that the Articles authorise (either as originally framed or as validly altered) the payment of a commission of an amount or rate per cent. not less than actually paid; (3) that the

amount or rate of the commission be disclosed in the Prospectus.

It was further enacted by the Act of 1900 that, excepting under the last-mentioned conditions, the Company should not apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount, or allowance to any person in consideration of his subscribing for any shares of the Company, and this "whether the "shares or money be so applied by being added to "the purchase-money of any property acquired by "the Company, or to the contract price of any work "to be executed for the Company, or the money be "paid out of the nominal purchase-money or contract "price or otherwise."

Now by Section 8 (2) of the Act of 1907, such commissions may be paid where the shares are not offered to the public for subscription, provided that the commission is authorised by the Articles and is disclosed in the Statement in lieu of Prospectus, or in a circular or notice inviting subscriptions.

Prior to the Act of 1900, it was the Promoter or Vendor who usually paid the commissions for underwriting. The Acts do not directly prohibit this from being done, but if the Promoter or Vendor pay the commissions out of capital money or shares received from the Company, the conditions mentioned above must be complied with.

There is nothing to prevent the Promoter or Vendor from paying the commissions out of his own moneys; but if he does that, the contract with the underwriters under which the commission is paid



must be disclosed in the Prospectus, or in the Statement in lieu of Prospectus.

Where there is no public issue of shares the amount or rate of commission must be disclosed in any Circular or Notice (not being a Prospectus) inviting subscriptions.

### **THE PROSPECTUS, OR STATEMENT IN LIEU OF PROSPECTUS.**

Under Section 1 of the Act of 1907, every Company which is not a Private Company, or which has not allotted any shares or debentures before the commencement of the Act of 1907, must either issue and file a Prospectus, or must file with the Registrar a statement in lieu of Prospectus according to the form and with the particulars set out in the First Schedule to the Act of 1907, before the Company is entitled to allot any shares or debentures, and such statement must be signed by every person named therein as a Director or proposed Director, or by his agent authorised in writing.

No Prospectus must be issued until it has been dated, signed by all the Directors, and filed with the Registrar on or before the date of its publication (Section 9 of the Act of 1900).

By Section 3 of the 1907 Act, the penalty for not filing the Prospectus is £5 for each day's default.

The requirements of the Acts with regard to statements to be made in the Prospectus are numerous, and the Section itself [Section 2 (1) of the Act of 1907, which is now substituted for Section 10 (1)

of the Act of 1900], will have to be studied carefully in practice.

The following is a summary :

- (a) The contents of Memorandum, with the names, descriptions, and addresses of the signatories ; and the number of founders' or management or deferred shares, and the interest of the holders in the property and profits of the Company.
- (b) The number of shares (if any) fixed by the Articles as the qualification of a Director, and any provisions in the Articles for the remuneration of Directors.
- (c) The names, descriptions, and addresses of Directors.

The Section applies to a Prospectus offering debentures as well as to one offering shares.

There is (in Sub-section 4 of the Section 10 of the Act of 1900, as now amended by Section 2 (2) of the Act of 1907), a provision that the requirements shall not apply to a circular or notice inviting existing Members or Debenture Holders to take further shares or debentures of the Company, whether with or without the right to renounce in favour of other persons.

In that case none of the particulars dictated by this Section would be requisite.

If the Prospectus be published more than a year after the Company is entitled to commence business, none of the particulars marked (a), (b), and (c) above are requisite, except the disclosure relating to founders' and management shares (see Sub-section 4 of Section 10 of the Act of 1900).

- (d) The minimum subscription on which the Directors may proceed to allotment, and the amount payable on application and allotment on each share, and in case of a second or subsequent allotment made within the two preceding years, and the amount actually allotted and paid on such shares.
- (e) The number and amount of shares and debentures which within the two preceding years have been issued or agreed to be issued as fully or partly paid up otherwise than in cash, and in either case the consideration therefor.
- (f) Names and addresses of Vendors, and amount payable in cash, shares, or debentures to Vendor; and where there is more than one separate Vendor, or the Company is a sub-purchaser, the amount payable to each Vendor. Provided that where the Vendors or any of them are a firm, the members of the firm shall not be treated as separate Vendors.
- (g) The amount paid or payable as purchase-money in cash, shares, or debentures, specifying also the amount payable for goodwill.

The minimum subscription has been explained in the Introduction (page 3); and what constitutes a Vendor within the meaning of this Section has been pointed out on pages 23 and 24.

- (h) The amount paid within the two preceding

years or payable as commission for underwriting, or the rate of such commission for shares or debentures ; but it is not necessary to state the commission payable to sub-underwriters.

- (i) The amount or estimated amount of preliminary expenses.
- (j) The amount paid within the two preceding years or intended to be paid to any Promotor, and the consideration for any such payment.

The commission for underwriting has been already dealt with on pages 34 and 35, as also the payments to the Promoter on pages 6 and 7. With regard to preliminary expenses, the Acts do not define what these may include. Advertising and printing Prospectuses, Solicitor's costs, Accountant's fees, Valuer's fees, and Broker's fees, and commissions would, presumably, fall within the description, as well as the stamp duties and registration fees.

- (k) The dates and parties to every "material contract," and a reasonable time and place at which such contracts may be inspected.
- (l) The names and addresses of the auditors.
- (m) Full particulars of the interest of any Director in the promotion of the Company, or in the property to be acquired by the Company, or where the interest of such Director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums

agreed to be paid to him or to the firm, in cash or shares or otherwise, either to induce him to become or to qualify him as a Director or otherwise, for services rendered by him or by the firm in connection with the promotion or formation of the Company.

- (n) Where the Company is a Company having shares of more than one class, the right of voting at meetings of the Company conferred by the several classes of shares respectively.

With regard to (k), there is a provision that this requirement shall not apply to "a contract entered into in the ordinary course of business carried on or intended to be carried on by the Company," or to any contract made more than three years before the date of publication of the Prospectus.

With regard to (m), it is evident that it is competent of a Director to be a Promoter or Vendor.

(n) Is a new provision of the Act of 1907, which will be a useful protection, giving to an intending Shareholder proper information about the voting power of the class of shares for which he proposes to subscribe.

Section 38 of the Companies Act, 1867, which dealt with the disclosure in the Prospectus of all contracts, has been repealed, and this Section stands in place of it.

The question of waiver of the right to have material contracts disclosed is set at rest; for by Section 10 (5) of the Act of 1900 it is enacted that

any condition binding any applicant to waive compliance with any requirement of the Section, "or "purporting to affect him with notice of any contract or matter not specifically referred to in the "Prospectus shall be void." This, of course, prevents a waiver of any of the requirements in the Prospectus.

### RESTRICTIONS ON COMMENCEMENT OF BUSINESS AND THE EXERCISE OF BORROWING POWERS.

It should be observed that the restrictions imposed by the Act of 1900 with regard to commencing business and exercising borrowing powers will apply to Companies registered on or after 1st July, 1908, where there is no invitation to the public to subscribe for shares.

With the exception of Private Companies (see p. 33) all Companies registered after 31st December, 1900, which go to the public for share capital, and (with the like exception) all Companies registered on or after 1st July, 1908, whether they go to the public for share capital or not, will not be able lawfully to commence business or exercise any borrowing powers unless :

- (a) Shares have been allotted to the amount of the minimum subscription (as before explained).
- (b) Every Director has paid for his shares the same proportion as the public have to pay on application and allotment.

- (c) A statutory declaration has been filed with the Registrar proving compliance with these conditions.
- (d) There has been filed with the Registrar a Prospectus or a Statement in lieu of Prospectus.

When this is complied with the Registrar will give his certificate of the Company's right to commence business.

It must be borne in mind that under Section 4 of the Act of 1900 no allotment of shares can be made until the sum payable on application has been paid, and this application money must not be less than 5 per cent. of the nominal amount of the share. So that before the Company gets its right to commence business, or to exercise borrowing powers, all the application money payable for the minimum subscription must have been received by the Company, and the Directors must have paid what is due on allotment as well as on application for all shares taken by them for cash.

The Act of 1900 makes all contracts entered into by a Company, prior to getting the Registrar's certificate of the right to commence business, provisional contracts only [Section 6 (3) of the Act of 1900].

The effect of this is that the Company is not bound by the contract until it acquires the right to commence business, but as soon as the Registrar's certificate of the right to commence business is obtained the contract will become enforceable by either party.

In the absence of special provision to the con-



trary, the contract will be binding on the Vendor to the Company subject only to the Company getting the right to commence business.

In practice there will probably be a limit of time inserted in the contract, making it determinable, if the Company does not get the certificate of right to commence business on or before a fixed date.

Sub-section (4) of Section 6 of the Act of 1900, as amended by Section 4 of the Act of 1907, permits the simultaneous offer for subscription or allotment of any shares and debentures, or the receipt of any money payable on application for debentures.

The amendment made by this Section 4 of the Act of 1907 will enable a Company to allot debentures before it is entitled to commence business.

## CHAPTER III.

### OF THE MANAGEMENT OF COMPANIES.

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#### REGISTRATION OF MORTGAGES AND CHARGES.

THE Act of 1900 did not necessitate the registration with the Registrar of all Mortgages and Charges.

This has been amended to a considerable extent by the Act of 1907, which by Section 10 has added to the Act of 1900 two further classes of Mortgages and Charges which must be registered, viz. (1) a Mortgage or Charge on any land wherever situate or any interest therein, and (2) a Mortgage or Charge on any book debts of the Company.

But, charges given to bankers and secured on the investments of the Company in stocks and shares, do not come within the Acts.

There have to be kept two separate and distinct Registers :

- (1) A Register to be kept by the Secretary at the Company's offices as formerly, under Section 43 of the Companies Act, 1862.
- (2) A Register to be kept by the Registrar at

Somerset House, under the Acts of 1900 and 1907.

(1) In the first of these Registers all Mortgages and Charges specifically affecting property of the Company have to be entered, and this Register can, under the Act of 1907, be inspected, not only by existing creditors or members of the Company, but by any person on payment of the proper fee, not exceeding 1s. (Section 17).

Failure to register in this Register does not affect the validity of the Mortgage or Charge.

(2) In the second of the Registers must be entered only such Mortgages and Charges as are included in the description given in Section 10 of the Act of 1907.

Failure to register in this Register within the time limited makes the Mortgage or Charge void as against the liquidator and any creditor of the Company, as before explained at page 28.

As one of the chief objects of registration of Mortgages and Charges is to give to intending creditors (who are about to give credit to the Company) information upon the Company's indebtedness to secured creditors, the Act of 1907 introduces a useful alteration in this respect.

With the object of making the Register of Mortgages kept by the Registrar effective as a protection to intending creditors, it is enacted by Section 12 of the Act of 1907, that within three months of the commencement of that Act there must be sent to the Registrar a statement of the total amount of debts of the Company secured by Mortgages or Charges

created before the commencement of that Act, which, under the provisions of that Act, would have required registration had they been created after the commencement of that Act.

By Section 13 of the Act of 1907, a floating charge on the undertaking or property of a Company created within three months of the commencement of the Company's winding up is made invalid (unless it be proved that the Company immediately after the creation of the charge was solvent) except to the amount of any cash paid to the Company at, or subsequently to the creation of the charge, together with interest on that amount at 5 per cent. per annum.

A Floating Charge, therefore, if given for past advances, will be invalid.

Appointment of Receivers or Managers must be notified to the Registrar within seven days of the order or of the appointment under a deed, and the Registrar must enter the fact in the Register of Mortgages [Section 11 (1) of the Act of 1907].

With regard to Receivers or Managers acting when the Act comes in force, such notice must be given to the Registrar within seven days after the commencement of the Act of 1907.

By Section 16 of the Act of 1907, a contract with a Company to take up and pay for debentures may be enforced by specific performance.

The general principle of law, that a contract to lend money cannot be enforced by an order for specific performance, is thus modified in favour of Companies.

## THE STATUTORY MEETING.

The first Statutory Meeting of every Limited Company registered on or after January 1st, 1901, must be held within a period of not less than one month nor more than three months from the date at which the Company is entitled to commence business [Section 12 (1) of the Act of 1900].

The Directors must send at least seven days before the meeting to every Member and Debenture Holder of the Company a report in the form which has been already described at pages 14 and 15, which must include an abstract of the receipts of the Company on account of its capital (Section 22 of Act of 1907).

A copy of this report, certified by the Auditors as already mentioned on page 31, must be filed with the Registrar immediately after it has been sent to Members and Debenture Holders of the Company [Section 12 (4) of the Act of 1900].

The combined effect of Section 12 of the 1900 Act and Section 23 of the 1907 Act seems to make it necessary to send this Report to Debenture Holders as well as Shareholders in Companies (other than private Companies) registered on or after July 1st, 1908.

A list of Shareholders, with their descriptions and addresses, must be produced at the commencement of the meeting, and must remain open and accessible to any Shareholder during the continuance of the meeting [Section 12 (5) of the Act of 1900].

The members present at the meeting may discuss any matter relating to the formation of the Company, or arising out of the report, whether previous

notice has been given or not. But no resolution can be passed of which notice has not been given in accordance with the Articles [Section 12 (6) of the Act of 1900].

The meeting may adjourn from time to time. At any adjourned meeting any resolution may be passed of which notice has been given (in accordance with the Articles) either before or after the former meeting. The adjourned meeting shall have the same powers as an original meeting [Section 12 (7) of the Act of 1900].

If, therefore, the Shareholders are not satisfied with the report, they can adjourn the meeting to such a day as shall give time for proper notice of a resolution to be moved at the adjourned meeting.

Any Shareholder may petition the Court for the winding up of the Company if default be made in filing the report, or in holding the Statutory Meeting for upwards of fourteen days after the last day on which the meeting ought to have been held. On hearing the petition the Court may direct the Company to be wound up, or may give directions for the report to be filed or the meeting to be held, or may make such other order as may be just, and may throw the costs of the petition on any persons in default [Section 12 (8) of the Act of 1900].

Private Companies are exempted by Section 22 (2) of the Act of 1907 from filing the Report of Directors; but are not exempted from holding the Statutory Meeting.

By Section 24 of the Act of 1907 a general meeting of the Company must be held once at least in

every calendar year, and the interval between successive general meetings must not exceed fifteen months, and a fine is imposed on Directors and other officers making default as before described (page 17).

Upon application by a Shareholder the Court may call or direct the calling of a general meeting [Section 24 (2) of the Act of 1907].

### THE ANNUAL SUMMARY.

The joint effect of Section 19 of the Act of 1900 and Section 26 of the Companies Act, 1862, as amended by Sections 7 and 21 of the Act of 1907, is that Companies, whether registered before or after the 31st December, 1900, must make out their Annual Summary for the Registrar with the following particulars :

- (1) The amount of the capital of the Company and the number of shares into which it is divided.
- (2) The number of shares taken from the commencement of the Company up to the date of the Summary, distinguishing between the shares issued for cash and the shares issued otherwise than for cash or partly for cash.
- (3) The amount of calls made on each share, distinguishing as in (2).
- (4) The total amount of calls received, distinguishing as in (2).
- (5) The total amount of calls unpaid, distinguishing as in (2).



- (6) The total amount of shares forfeited, distinguishing as in (2).
- (7) The names, addresses, and occupations of persons who have ceased to be members since the last list was made, and the number of shares held by each of them, distinguishing as in (2).
- (8) The total amount of debt due from the Company in respect of all Mortgages and Charges which require registration under the Act of 1907.
- (9) The names and addresses of Directors at the date of the Summary.
- (10) The amount of commissions on shares or debentures or discounts on debentures (Section 7 of the Act of 1907).
- (11) A Statement (made up to such date as may be specified in this Statement) in the form of a balance sheet, audited by the Company's auditors, and containing a summary of its capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of such liabilities and assets, and how the values of the fixed assets have been arrived at. But this balance sheet need not include a statement of profit and loss (Section 21 of the Act of 1907).

Private Companies, under the Act of 1907, are exempt from furnishing this Statement (11).

This List and Summary must be signed by the Manager or by the Secretary of the Company.

## CHAPTER IV.

### RECONSTRUCTIONS AND AMALGAMATIONS IN THE WINDING UP OF COMPANIES.

Under Section 2 of the Companies Arrangement Act, 1870, a majority of Creditors can bind a minority in carrying out any compromise or arrangement in the winding up of a Company ; but prior to the Act of 1900, a majority of Shareholders could only bind a minority under similar circumstances, subject to the burden of buying out the interest of any member of the minority who dissented from the scheme proposed.

Section 38 of the Act of 1907 makes Section 2 of the Companies Arrangement Act, 1870 (which will be found set out in the Appendix) apply to a Company which is not in course of being wound up in like manner as it applies to a Company being wound up.

Under Section 161 of the Companies Act, 1862, where a Company was being wound up voluntarily, and a special resolution was passed for the Company to transfer its business or property to another Company (on receipt by the Liquidator of shares in the other Company for distribution amongst the Share-

holders in the Company which was being wound up), a Shareholder who had not voted in favour of the resolution could, by expressing his dissent to the Liquidator in the prescribed manner, compel the Liquidator to do one of two things—viz. (a) either to abstain from carrying the resolution into effect; or (b) to purchase the interest of the dissentient Shareholder at a price to be determined, in case of dispute, by arbitration (see page 105).

Under the Act of 1900 another method is provided, whereby the majority of Shareholders can, on approving a reconstruction scheme, bind the dissentient Shareholders without the necessity of buying out their interests (Section 24 of the Act of 1900).

### **WINDING UP, AND RECEIVERS AND MANAGERS.**

A Liquidator in a Voluntary Winding Up must file with the Registrar (within 21 days after his appointment) a notice of his appointment, in the form prescribed by the Board of Trade.

In default the Voluntary Liquidator becomes liable to a fine not exceeding £5 for every day the default continues (Section 26 of the Act of 1907).

A Liquidator in a Voluntary Winding Up must also ascertain who appear to be creditors of the Company, and must (within 7 days of his appointment) send notice by post to all persons who appear to him to be creditors, of a meeting to be held at a date, place, and hour specified, such date not to be less than 14 days nor more than 21 days after the

Liquidator's appointment. He must also advertise the notice of the meeting once in the 'Gazette' and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the Company is situated [Section 27 (1) of the Act of 1907].

This compulsory first meeting of Creditors in a Voluntary Winding Up is a new provision of the Act of 1907.

At this first meeting of creditors they are to determine (a) whether application shall be made to the Court for appointment of another person as Liquidator in place of or jointly with the Voluntary Liquidator appointed by the Company ; (b) whether the Court shall be applied to for the appointment of a Committee of Inspection, and (c) if such application is to be made then to fix which creditor is to make the application. The application to the Court (if any) is not to be made later than 14 days after the meeting [Section 27 (2) of the Act of 1907].

Receivers or Managers of the property of any Company when appointed under the powers contained in any instrument (those appointed by the Court are subject to the Rules of the Supreme Court) are bound under penalty not exceeding £50 (1) to file every half-year an abstract of their receipts and payments in the form prescribed by the Board of Trade, and (2) on ceasing to act they must file with the Registrar a notice to that effect [Section 41 of the Act of 1907].

The fact of the appointment of a Receiver must be notified to the Registrar, who is to enter it on the

Register of Mortgages and Charges [Section 10 of the Act of 1907]. And the fact of the Receiver or Manager's discharge must also be entered on this Register.

Section 45 of the Act of 1907 provides for the printing and registration with the Registrar of every extraordinary resolution in like manner, to the printing and registration of a special resolution under Section 53 of the Act of 1862.

One result of this will be that extraordinary resolutions for winding up Companies which have formerly only been advertised in the 'Gazette' will now have to be registered with the Registrar.

By Section 29 of the Act of 1907 it is enacted that an order to wind up a Company shall not be refused on the ground only that the assets of the Company have been mortgaged to an amount equal to or in excess of those assets, or on the ground only that the Company has no assets.

This Section gives statutory confirmation to the tendency of recent decisions of the Court, and makes it clear that neither the fact of the assets of the Company being mortgaged up to the hilt, nor the fact that the Company has no assets, will alone be sufficient to prevent the Court from ordering a winding up.

When the assets have been recklessly or improperly dealt with an investigation by compulsory winding up may be very just and necessary, and formerly was difficult to obtain.

## DISSOLUTION OF COMPANIES.

The combined effect of Sections 142 and 143 of the Companies Act, 1862 (which, with the amendment made by Section 50 of the 1907 Act, will be found in the Appendix), is that so soon as the affairs of a Company under voluntary liquidation are fully wound up the liquidators must make up an account showing the manner in which the winding up has been conducted, and call a general meeting of the Company for the purpose of having the accounts laid before the meeting and hearing the explanations of the liquidators, and within one week after the meeting the liquidators have to make a return to the Registrar of the meeting and of the date when the meeting was held.

The Registrar on receiving this return must register it, and on the expiration of three months from the date of such registration the Company shall be deemed to be dissolved.

Under Section 31 (1) of the 1907 Act the Court (on the application of the Liquidators or any other person who appears to the Court to be interested) may, after the return before mentioned has been made to the Registrar, make an order deferring the date at which the dissolution is to take effect for such time as seems fit to the Court, but such order will have to be made before the expiration of the three months when dissolution would result.

This power will prevent a liquidation from being hurried through to the detriment of persons other

than the Liquidator who are interested, and a proper administration of the Company's assets.

Under Section 31 (2) of the 1907 Act, where a Company "has been dissolved" (including apparently compulsory liquidation and liquidation under supervision as well as voluntary liquidation) the Court may at any time within two years of the date of the dissolution (on application by the Liquidators or by any other person who appears to the Court to be interested) make an order declaring the dissolution to have been void, and thereupon "such proceedings may be taken as might have been taken if the Company had not been dissolved."

The Court under this Section appears to have the power if the application be made within two years of the dissolution, to open up the dissolution of a Company on any grounds which the Court deems sufficient, and not only on the ground of fraud.

Under Section 31 (3) of the 1907 Act it is the duty of the person on whose application the order deferring the date of dissolution [Section 31 (1)] or the order making void the dissolution [Section 31 (2)] was made to file with the Registrar within seven days an office copy of the order. In default, such person is liable to a penalty of not exceeding £5 a day whilst the default continues.



# APPENDIX.

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## THE COMPANIES ACT, 1900,

With the substituted clauses of the Companies Act, 1907,  
introduced in place of repealed Sections.  
(63 & 64 *Victoria, Chapter 48.*)

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### AN ACT TO AMEND THE COMPANIES ACTS.

*8th August, 1900.*

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

#### 1.

##### *Incorporation and Objects.*

1.—(1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requisitions of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under the Companies Acts.

(2) A statutory declaration by a solicitor of the High Court engaged in the formation of the company or by a person named in the articles of association as a director or secretary of the company of compliance with all or any of the said requisitions shall be produced to the registrar, and the registrar may accept this declaration as sufficient evidence of such compliance.

(3) The incorporation of a company shall take effect from the date of incorporation mentioned in the certificate of incorporation.

(4) This section applies to all certificates of incorporation, whether given before or after the passing of this Act.

## 2

*Appointment and Qualification of Director.*

2.—(1) A person shall not be capable of being appointed director of a company by the articles of association, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, unless, before the registration of the articles or the publication of the prospectus, as the case may be, he has by himself or his agent authorised in writing—

(a) signed and filed with the registrar a consent in writing to act as such director: and

(b) either signed the memorandum of association for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2) On the application for registration of the memorandum and articles of association of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company, and if this list contains the name of any person who has not so consented the applicant shall be liable to a fine not exceeding fifty pounds.

(3) Provided that this section shall not apply to a company registered before the commencement of this Act, [or to a company which does not issue any invitation to the public to subscribe for its shares,] or to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

*Note.*—This section now applies to a company which does not issue a prospectus. See Second Schedule to Act of 1907.

## 3

3.—(1) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company.

(2) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification: and a

- 3 person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

By section thirty-four of the Act of 1907, the following provision shall be substituted for sub-section three of section three of the Companies Act, 1900 :

(3) "If after the expiration of the said period or shorter time any unqualified person acts as a director of the company he shall be liable on conviction to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director."

#### 4

#### *Allotment.*

4.—(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely—

(a) the amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of five per cent. per annum from the expiration of the forty-eight days: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

- 4 (5) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void.

(6) This section, except sub-section three thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

- 5 5.—(1) An allotment made by a company to an applicant in contravention of the foregoing provisions of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the foregoing provisions of this Act with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

*Note.*—See section 1 (4) of 1907 Act, which enacts that the above section shall apply as if section 1 (2) and (3) of the 1907 Act were included amongst the foregoing provisions of this section.

- 6 6.—(1) A company shall not commence any business or exercise any borrowing powers unless —

(a) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c) there has been filed with the registrar a statutory declaration by the secretary or one of the directors, in the prescribed form, that the afore-said conditions have been complied with.

(d) there has been filed with the registrar a statement in lieu of prospectus (see Second Schedule to 1907 Act).

(2) The Registrar shall, on the filing of this statutory declaration, certify that the company is entitled to commence

- 6 business, and that certificate shall be conclusive evidence that the company is so entitled.

*Note.*—The registrar shall not give the certificate mentioned in this sub-section unless statement in lieu of Prospectus has been filed (Second Schedule to 1907 Act).

(3) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

By section four of the Act of 1907, the following provision shall be substituted for sub-section four of section six of the Companies Act, 1900 :

“(4) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures, or the receipt of any money payable on application for debentures.”

(5) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6) Nothing in this section shall apply to a company registered before the commencement of this Act.

[(7) This section shall not apply to any company where there is no invitation to the public to subscribe for its shares.]

*Note.*—See Second Schedule of Act of 1907. The above section applies to a company which does not issue a prospectus inviting public subscription, subject to the modifications in the Second Schedule to the 1907 Act. Reference to shares offered for public subscription shall be construed (in this section) as a reference to shares payable in cash.

- 7 7.—(1) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar—

(a) a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and—

(b) in the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to

7

such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

*Note.*—See section six of 1907 Act. If there is no contract in writing, then particulars must be stamped as contract and filed within the same period and subject to the same penalties for default.

(2) If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

*Note.*—The Court, in case of accidental omission, may extend time for filing [section six (4) of 1907 Act].

8

8.—(1) Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per cent. of the commission paid or agreed to be paid are respectively authorised by the articles of association and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised.

(2) Save as aforesaid no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price, or otherwise.

(3) But nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.



9

*Prospectus.*

9.—(1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and shall be filed with the registrar on or before the date of its publication.

(3) The registrar shall not register any prospectus unless it is so dated and signed. No prospectus shall be issued until so filed for registration, and every Prospectus shall state on the face of it that it has been so filed.

*Note.*—The words in italics in the next Section show the additions to the original section ten of the 1900 Act.

10

2.—The following sub-section shall be substituted for subsection one of section ten of the Companies Act, 1900:—

“(1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

“(a) the contents of the memorandum of association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management or *deferred* shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

“(b) the number of shares, if any, fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors; and

“(c) the names, descriptions, and addresses of the directors or proposed directors; and

“(d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment *made within the two preceding years*, and the amount actually allotted; and the amount, if any, paid on such shares; and



10

- “(e) the number and amount of shares and debentures *which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which such shares or debentures have been issued or are proposed or intended to be issued; and*
- “(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares, or debentures to the vendor, and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor; *provided that, where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors; and*
- “(g) the amount (if any) paid or payable as purchase money in cash, shares, or debentures of any such property as aforesaid, specifying the amount (if any) payable for goodwill; and
- “(h) the amount (if any) paid *within the two preceding years* or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission; *provided that it shall not be necessary to state the commission payable to sub-underwriters; and*
- “(i) the amount or estimated amount of preliminary expenses; and
- “(j) the amount paid *within the two preceding years* or intended to be paid to any promoter and the consideration for any such payment; and
- “(k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than *two years*

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before the date of publication of the prospectus ;  
and

“(l) the names and addresses of the auditors (if any) of the company ; and

“(m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, *where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm*, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either *to induce him to become*, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company ; and

“(n) *Where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.*”

The said section of the Companies Act, 1900, shall not apply to a circular or notice inviting existing members or debenture holders of the company to subscribe for shares or debentures of the company, whether with or without the right to renounce in favour of other persons, and accordingly in sub-section four of that section for the words “for further shares or debentures” there shall be substituted the words “for shares or debentures of the company, whether with or without the right to renounce in favour of other persons.”

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase-money is not fully paid at the date of publication of the prospectus ; or

(b) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ; or

(c) the contract depends for its validity or fulfilment on the result of such issue.

(3) Where any of the property to be acquired by the Company is to be taken on lease, this section shall apply as if the expression “vendor” included the lessor, and the expression “purchase-money” included the consideration

- 10 for the lease, and the expression “sub-purchaser” included a sub-lessee.

(4) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe for [further] shares or debentures, *of the company, whether with or without the right to renounce in favour of other persons*, but, subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently : Provided that—

(a) The requirements as to the memorandum of association, and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus published more than one year after the date at which the company is entitled to commence business; and

[(b) In the case of a prospectus published more than one year after the date at which the company is entitled to commence business, the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus.]

*Note.*—The words in square brackets have been repealed and the words in italics added. See section two (2) and two (1) (*h*) and (*f*), and the fourth schedule to 1907 Act.

(5) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void.

(6) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum of association or the signatories thereto, and the number of shares subscribed for by them.

(7) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(a) as regards any matter not disclosed, he was not cognisant thereof; or

(b) the non-compliance arose from an honest mistake of fact on his part.

- 10 Provided that in the event of non-compliance with the requirements contained in paragraph (m) of sub-section (1) of this section no director or other person shall incur any liability in respect of such non-compliance unless it be proved that he had knowledge of the matters not disclosed.
- (8) Nothing in this section shall limit or diminish any liability which any person may incur under the general law apart from this section.
- 11 11.—A company shall not prior to the statutory meeting vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting.

*Note.*—This section is applicable to a company which does not issue a prospectus (see second schedule to 1907 Act).

*Statutory Meeting.*

- 12 12.—(1) Every company limited by shares and registered after the commencement of this Act shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called the statutory meeting.
- (2) The directors shall, at least seven days before the day on which the meeting is held, forward to every member of the company a report certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, stating:—
- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
  - (b) the total amount of cash received by the Company in respect of such shares, distinguished as aforesaid;
  - (c) an abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company;

*Note.*—The form of this abstract is varied in some particulars by section 22 (1) of the 1907 Act.

*Note.*—Private companies need not forward this report (section 22 (2) of 1907 Act).

12

(d) the names, addresses, and descriptions of the directors, auditors (if any), manager (if any), and secretary of the company; and

(e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(3) The report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company.

(4) The directors shall cause a copy of the report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

*Note.*—Private companies need not file this report (section 22 (2) of 1907 Act).

(5) The Directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(6) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles of association may be passed.

(7) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been given in accordance with the articles of association, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(8) If default is made in filing such report as aforesaid or in holding the statutory meeting, then, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any shareholder may petition the Court for the winding up of the company, and upon the hearing of the petition the Court may either direct that the company be wound up, or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who in the opinion of the Court are responsible for the default.

13.—(1) Notwithstanding anything in any regulations of a company, the directors of a company shall, on the requisition of the holders of not less than one tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and must be signed by the requisitionists, and deposited at the office of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3) If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit.

(4) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution, and, if thought fit, of confirming it as a special resolution; and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

#### *Mortgages and Charges.*

14 14.—(1) Every mortgage or charge created by a company after the commencement of this Act and being either—

[*Note.*—This is section 10 of the Act of 1907, substituted for section 14 of the 1900 Act.]

- (a) a mortgage or charge for the purpose of securing any issue of debentures; or
- (b) a mortgage or charge on uncalled capital of the company; or
- (c) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or



- 14      (d) a mortgage or charge on any land, wherever situate, or any interest therein; or  
         (e) a mortgage or charge on any book debts of the company; or

*Note.*—(d) and (e) were not in the Act of 1900.

(f) a floating charge on the undertaking or property of the company,  
shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with the instrument (if any) by which the mortgage or charge is created or evidenced, are delivered to or received by the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and where a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable:

Provided that—

- (i) In the case of a mortgage or charge created out of the United Kingdom comprising solely property situate outside the United Kingdom, the delivery to and the receipt by the registrar of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and twenty-one days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in the United Kingdom, shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the registrar; and
- (ii) where the mortgage or charge is created in the United Kingdom but comprises property outside the United Kingdom, the instrument creating or purporting to create such mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate; and
- (iii) where a negotiable instrument has been given to



14

secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts;

- (iv) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.

(2) The registrar shall keep, with respect to each company, a register in the prescribed form of all such mortgages and charges created by the company after the commencement of this act, and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient if there are delivered to or received by the registrar within twenty-one days after the execution of the deed containing the charge, or, if there is no such deed, after the first issue of any debentures of the series the following particulars:

- (a) the total amount secured by the whole series; and
- (b) the dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any, for the debenture holders:

together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter such particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the registrar for entry on the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4) Where any commission, allowance, or discount has been paid or made, either directly or indirectly by the company to any person in consideration of his subscribing or

- 14 agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required for registration under this section shall include particulars as to the amount or rate per cent. of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued :

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with), and the company shall cause a copy of the certificate so given to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered :

Provided that nothing in this sub-section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge given under this section to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(6) It shall be the duty of the company to send to the registrar for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series and requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein, and, if the company fail to comply with the requirements of this sub-section, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

(7) The register kept, in pursuance of this section, of the

- 14 mortgages and charges of each company shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection.

(8) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company, and to be open to inspection by the members and creditors of the company in like manner as the register of mortgages under section forty-three of the Companies Act, 1862, and the provisions of that section (including the penal provisions thereof) shall apply accordingly: Provided that, in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

(9) Section fourteen of the Companies Act, 1900, is hereby repealed.

- 15 15.—A Judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time required by this Act, or the omission or mis-statement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified.

- 16 16.—The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof.

- 17 17.—The registrar shall keep a chronological index in the prescribed form and with the prescribed particulars, to the mortgages or charges registered under this Act.

- 18 18.—If any company makes default in complying with the requirements of this Act as to the registration of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted such default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds; and if any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock required by this Act to be registered, without a copy of the certificate of the registrar being endorsed upon it, he shall, without prejudice to any

- 18 other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

19

*Annual Summary.*

19.—(1) The summary mentioned in section twenty-six of the Companies Act, 1862, shall be so framed as to distinguish between the shares issued for cash and the shares issued otherwise than for cash or only partly for cash, and shall, in addition to the particulars required by that section to be specified, also specify—

(a) the total amount of debt due from the company in respect of all mortgages and charges which require registration under this Act, or which would require such registration if created after the commencement of this Act; and—

(b) the names and addresses of the persons who are the directors of the company at the date of the summary.

(2) The list and summary mentioned in the said section twenty-six must be signed by the manager or by the secretary of the company.

20

(20).—Sections forty-five and forty-six of the Companies Act, 1862, shall apply to companies having a capital divided into shares, and the words “and not having a capital divided into shares” in those sections shall be repealed.

*Note.*—For these Sections see pages 103 and 104.

21

*Audit.*

21.—(1) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors.

(5) The directors of a company may fill any casual vacancy in the office of auditor, but while any such vacancy

21 continues the surviving or continuing auditor or auditors, if any, may act.

22 22.—The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

23 *Auditors ; Balance Sheet ; and Reports.*

*Note.*—The following section is by Section 19 of the 1907 Act substituted for section 23 of the Companies Act, 1900:—

“23.—(1) Every auditor of the company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

“(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet, laid before the company in general meeting during their tenure of office, and the report shall state—

“(a) whether or not they have obtained all the information and explanations they have required; and—

“(b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

“(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company or, if there is only one director, by that director, and the auditor's report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder, who shall be entitled to be furnished with a copy of the balance sheet and auditor's report at a charge not exceeding sixpence for every hundred words.

“(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before



- 23 the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode allowed by the articles, not less than seven days before the annual general meeting: Provided that if, after a notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after that notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the general annual meeting.

“(5) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated, or published, or if any copy of a balance sheet is issued, circulated, or published, without either having a copy of the auditor's report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.”

24

*Winding up.*

24.—The provisions of section two of the Joint Stock Companies Arrangement Act, 1870, shall apply not only as between the company and the creditors, or any class thereof, but as between the company and the members, or any class thereof.

25

25.—In a voluntary winding-up an application under section one hundred and thirty-eight of the Companies Act, 1862, may be made by any creditor of the company.

26

*Defunct Companies.*

26.—(1) Where a company is being wound up and the registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the registered address of the company, or to the liquidator at his last known place of business, the provisions of section seven of the Companies Act, 1880, shall apply in like manner as if the registrar

26 had not within one month after sending the second letter therein mentioned received any answer thereto.

(2) In sub-section five of the said section seven, after the words "or member," in each place where they occur, shall be inserted the words "or creditor," and in the same sub-section, after the word "operation," the words "or otherwise" shall be substituted for the word "and."

27 *Companies limited by Guarantee.*

27.—(1) A company limited by guarantee shall not be capable of having a capital divided into shares, unless the memorandum of association so provides, and specifies the amount of its capital (subject to increase or reduction in accordance with the Companies Acts) and the number of shares into which the capital is divided.

(2) Every provision in any memorandum or articles of association or resolution of a company (whether limited by guarantee or otherwise) purporting to divide the undertaking of the company into shares or interests shall for the purposes of this section be treated as a provision for a capital divided into shares, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

(3) In the case of a company limited by guarantee and not having a capital divided into shares, every provision in the memorandum or articles of association or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(4) This section shall apply only to companies registered after the commencement of this Act.

28 *False Statements.*

28.—If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid: Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.



29

*Conversion of Stock into Shares.*

29.—Every company limited by shares, and which has in pursuance of the Companies Act, 1862, converted any portion of its shares into stock, may so far modify the conditions in its memorandum of association, if authorised to do so by its articles as originally framed or as altered by special resolution in manner provided in the Companies Act, 1862, as to reconvert such stock into paid-up shares of any denomination.

30

*Supplemental.*

30.—In this Act, unless the context otherwise requires,—  
The expression “Companies Acts” means the Companies Act, 1862, and the Acts amending the same ;

The expression “company” means a company registered under the Companies Acts ;

The expression “director” includes any person occupying the position of director, by whatever name called ;

The expression “registered” means registered under the Companies Acts ;

The expression “prescribed” means prescribed by the Board of Trade ;

The expression “prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company :

The expression “debenture” includes debenture stock ;

Other expressions have the same meanings as in the Companies Act, 1862.

31

31.—This Act shall, except as otherwise expressed, apply to every company, whether formed before or after the commencement of this Act.

32

32.—The Companies (Winding-up) Act, 1890, and this Act shall have effect as part of the Companies Act, 1862 ; but nothing in this section shall be construed as extending the Companies (Winding-up) Act, 1890, to Scotland or Ireland.

33

33.—(1) Section twenty-five of the Companies Act, 1867, and the other enactments mentioned in the schedule to this Act, to the extent specified in the third column of that schedule are hereby repealed.

(2) No proceedings under section twenty-five of the

- 33** Companies Act, 1867, shall be commenced after the commencement of this Act.
- 34** 34.—This Act shall apply to Scotland, subject to the following provisions and modifications:
- (1) "Solicitor of the High Court" shall mean enrolled law agent;
  - (2) The provisions of this Act with respect to the registration of mortgages and charges shall not apply to companies registered in Scotland;
  - (3) All prosecutions for offences or fines shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.
- 35** 35.—This Act shall, except as otherwise expressed, come into operation on the first day of January one thousand nine hundred and one.
- 36** 36.—This Act may be cited as the Companies Act, 1900, and may be cited with the Companies Acts, 1862 to 1898.

## SCHEDULE.

## ENACTMENTS REPEALED.

Session and chapter.	Short title.	Extent of repeal.
25 & 26 Vict., c. 89	The Companies Act, 1862	Section eighteen from "A certificate" to the end of the section. In sections forty-five and forty-six, the words "and not having a capital divided into shares." Section one hundred and ninety-two
30 & 31 Vict., c. 131	The Companies Act, 1867	Sections twenty-five, thirty-eight and thirty-nine.

**THE COMPANIES ACT, 1907.**

(7 *Edward VII*, Chapter 50.)

AN ACT TO AMEND THE COMPANIES ACTS, 1862 to 1900.

28th August, 1907.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Prospectus and Allotment.*

1     1.—(1) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus, signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in the First Schedule to this Act.

(2) Sections two, six, and eleven of the Companies Act, 1900, as amended by this Act, shall apply to companies which do not issue a prospectus inviting public subscription of their shares, subject to the modifications set out in the Second Schedule to this Act.

(3) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is to say):—

(a) the amount (if any) fixed by the memorandum or articles of association and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b) if no amount is so fixed and named, then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash,

- 1 has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(4) Section five of the Companies Act, 1900, shall apply as if the foregoing provisions of this section were included amongst the foregoing provisions of that Act mentioned in the said section five.

(5) This section shall not apply to private companies as defined by this Act, or to any company which has allotted any shares or debentures before the commencement of this Act.

- 2 [2.—This section is substituted for section ten of the Act of 1900 and will be found printed with that Act at page 63.]

- 3 3.—If a prospectus is issued without a copy thereof being filed for registration as required by section nine of the Companies Act, 1900, the company and every person who is knowingly a party to the issue of the prospectus shall on conviction be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed.

- 4 [4.—This section is substituted for section 6 (4) of the Act of 1900, and will be found printed with that Act at page 61.]

- 5 5.—(1) Every company shall within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding five pounds for every day during which the default continues.

- 6 6.—(1) Where such a contract as is mentioned in paragraph (b) of subsection (1) of section seven of the Companies Act, 1900, is not reduced to writing, the company shall within the time limited in the said section file with the registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.

(2) Such particulars shall be deemed to be an instrument within the meaning of the Stamp Act, 1891, and the regis-

- 6     trar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section twelve of that Act.

(3) The provisions of section seven of the Companies Act, 1900, imposing penalties for default shall apply as if the requirement of this section were a requirement contained in that section.

(4) If default has been made in filing with the registrar within the time limited by section seven of the Companies Act, 1900, any document required to be filed by that section or this section, the company, or any person liable for the default, may apply to the court for relief, and the court, if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the court may think proper.

7     *Issue of Shares at a Discount and Payment of Commissions.*

7.—The total amount of the sums paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures shall be stated in the summary made under section twenty-six of the Companies Act, 1862, next after the payment of the commission or the allowance of the discount, and the total amount thereof, or so much thereof as has not been written off, shall be stated in every balance sheet until the whole amount thereof has been written off.

- 8     8.—(1) For removing doubts it is hereby declared that a vendor to, promoter of, or other person who receives payment in money or shares from, a company has, and always has had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under section eight of the Companies Act, 1900.

(2) The said section shall apply in cases where the shares are not offered to the public for subscription; provided that the payment of the commission is authorised by the articles of association of the company, and that the amount or rate paid or agreed to be paid as commission is disclosed in the statement in lieu of prospectus or in a statement in the prescribed form verified in like manner as a statement in lieu of prospectus and filed with the registrar, and, where a circular or notice, not being a prospectus, inviting subscriptions for the shares is issued, also disclosed in that circular or notice.

*Payment of Interest out of Capital.*

9.—Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of such share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work, building, or plant:

Provided that—

- (1) No such payment shall be made unless the same is authorised by the company's articles of association or by special resolution of the company:
- (2) No such payment, whether authorised by the articles of association or by special resolution, shall be made without the previous sanction of the Board of Trade:
- (3) Before sanctioning any such payment the Board of Trade may, at the expense of the company, appoint a person to inquire and report to them as to the circumstances of the case, and may, before making the appointment, require the company to give security for payment of the costs of the inquiry.
- (4) The payment shall be made only for such period as may be determined by the Board of Trade; and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided:
- (5) The rate of interest shall in no case exceed four per cent. per annum or such lower rate as may for the time being be prescribed by Order in Council:
- (6) The payment of such interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid:
- (7) The accounts of the company shall show the capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate:



9           (8) Nothing in this section shall affect any company to which the Indian Railways Act, 1894, as amended by any subsequent enactment, applies.

10       [10.—This section is substituted for section fourteen of the Act of 1900, and will be found printed with that Act at page 69.]

11       11.—(1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the powers contained in the instrument, give notice of the fact to the registrar, and the registrar shall, on payment of the prescribed fee, enter the fact on the register of mortgages and charges.

(2) Where, at the commencement of this Act, any such receiver or manager is acting under an order or appointment made before the commencement of this Act, the notice shall be given within seven days after the commencement of this Act.

(3) If any person makes default in complying with the requirements of this section he shall on conviction be liable to a fine not exceeding five pounds for every day during which the default continues.

12       12.—(1) It shall be the duty of a company within three months after the commencement of this Act to send to the registrar for registration a statement of the total amount outstanding at the commencement of this Act of the debts of the company secured by mortgages or charges created before the commencement of this Act, which under the provisions of this Act would have required registration had they been created after the commencement of this Act, except those already required to be registered under section fourteen of the Companies Act, 1900, and the registrar shall, on payment of the prescribed fee, enter those particulars on the register of mortgages and charges:

Provided that the neglect of the company to comply with the provisions of this sub-section shall not prejudice the rights under any such mortgage or charge of any person in whose favour the mortgage or charge was made.

(2) If the company fail to comply with the requirements of this section, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues.

13       13.—Where a company is being wound up, a floating charge on the undertaking or property of the company



13 created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

14 14.—For removing doubts it is hereby declared that a condition contained in any debentures or in any deed for securing debentures, whether issued or executed before or after the passing of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

15 15.—(1) Where either before or after the passing of this Act a company has redeemed any debentures previously issued, the company, unless the articles of association of the company or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do, and not being an obligation enforceable only by the person to whom the redeemed debentures were issued, or his assigns, shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under this section, whether made before or after the passing of this Act, shall be treated as

- 15 the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued: Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty.

(5) Nothing in this section shall prejudice—

(a) the operation of any judgment or order of a court of competent jurisdiction pronounced or made before the seventh day of March one thousand nine hundred and seven as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or

(b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a company by its debentures or the securities for the same.

- 16 16.—A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

- 17 17.—The register of mortgages required by section forty-three of the Companies Act, 1862, shall be open to inspection by any person other than a creditor or member of the company on payment of such fee, not exceeding one shilling for each inspection, as may be fixed by regulations of the company, and that section shall apply accordingly.

- 18 18.—(1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles of the company during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of such register or any part thereof on payment of sixpence for every one hundred words required to be copied.

(2) A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such

18 debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company for such copy, or, where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied.

(3) If inspection is refused, or a copy is refused or not forwarded, the company shall on conviction be liable to a fine not exceeding five pounds, and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorises or permits such refusal shall incur the like liability.

19 [19.—This section is substituted for section twenty-three of the Act of 1900 and will be found printed with that Act at page 75.]

20 20.—In the case of companies registered in Scotland the summary mentioned in section twenty six of the Companies Act, 1862, in addition to the particulars required to be specified by that section and by section nineteen of the Companies Act, 1900, shall also specify the total amount of debt due from the company in respect of all mortgages and charges, which, if the company had been registered in England, would be required, under this Act, to be filed for registration, or would have been required so to be filed if created after the commencement of this Act.

21 21.—Every company required to forward to the registrar a summary under section twenty-six of the Companies Act, 1862, shall include in that summary a statement, made up to such date as may be specified in the statement, in the form of a balance sheet, audited by the company's auditors, and containing a summary of its capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of such liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss: Provided that this section shall not apply to any private company.

22 22.—(1) The report which the directors are required by section twelve of the Companies Act, 1900, to forward to every member of the company at least seven days before the date on which the statutory meeting of the company is held shall contain an abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments

- 22 made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company.

(2) A private company shall not be required to forward or to file the report required under section twelve of the Companies Act, 1900.

- 23 23.—(1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as are possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company nor to a company registered before the commencement of this Act.

24

*General Meeting, etc.*

24.—(1) The following section shall be substituted for section forty-nine of the Companies Act, 1862 :—

“A general meeting of every company shall be held once at least in every calendar year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held, the company, and every director, manager, secretary, and other officer of the company who is knowingly a party to the default, shall on conviction be liable to a fine not exceeding fifty pounds.”

(2) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may on the application of any member of the company call or direct the calling of a general meeting of the company.

(3) Any company which is a member of another company may, by minute of the directors, authorise any of its officials or any other person to act as its representative at any meeting of the latter company, and such representative shall be entitled to exercise the same functions on behalf of the company which he represents as if he had been an individual shareholder.

25

25.—A poll may be demanded at a meeting of a company at which a special resolution is submitted to be passed or confirmed under section fifty-one of the Companies Act, 1862, if demanded by three persons for the time being entitled according to the articles of the company to vote, unless the articles of the company require a demand by such number of such persons, not in any case exceeding five, as may be specified in the articles.

26

*Winding Up.*

26.—The liquidator of a company being wound up voluntarily shall, within twenty-one days after his appointment, file with the registrar a notice of his appointment in the prescribed form, and if any liquidator contravenes this provision he shall on conviction be liable to a fine not exceeding five pounds for every day during which the contravention continues.

27

27.—(1) Every liquidator appointed by a company in a voluntary winding up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than fourteen days nor more than twenty-one days after his appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in the 'Gazette' and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate.

(2) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the court at any time, not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting.

(3) On any such application the court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator, or such other order as, having regard to the interests of the creditors and contributories of the company, may seem just, and no appeal shall lie from an order of the court upon such application.

(4) The court shall make such order as to the costs of such application as it may think fit, and, if the court should be of opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, the court may order the costs of such application to be paid out of the assets of the company



- 27 notwithstanding that such application is dismissed or otherwise disposed of adversely to the applicant.

(5) The expression "Gazette" in this section means in the case of a company registered in England the London Gazette, in the case of a company registered in Scotland the Edinburgh Gazette, and in the case of a Company registered in Ireland the Dublin Gazette.

- 28 28.—In determining whether a company is unable to pay its debts within the meaning of section eighty of the Companies Act, 1862, the Court shall take into account the contingent and prospective liabilities of the company, and any contingent or prospective creditor shall be a creditor entitled to present a petition for winding up the company under section eighty-two of that Act: Provided that the Court shall not give a hearing to a petition for winding up the company by such a creditor until such security for costs has been given as the Court thinks reasonable, and until a *prima facie* case for winding up has been established to the satisfaction of the court.

- 29 29.—An order to wind up a company shall not be refused on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

- 30 30.—In the Preferential Payments in Bankruptcy Act, 1888, and the Preferential Payments in Bankruptcy (Ireland) Act, 1889, the date on which the order to wind up was made shall, in the case of a company ordered to be wound up compulsorily, be substituted for the date of the commencement of the winding up of the company:

Provided that this provision shall not apply where the order is made with respect to a company which before the date of the order had commenced to be wound up voluntarily.

- 31 31.—(1) Where a company has been wound up voluntarily and the return made by the liquidators to the registrar under section one hundred and forty-three of the Companies Act, 1862, has been registered in accordance with that section, the Court may, on the application of the liquidators or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as to the Court seems fit.

(2) Where a company has been dissolved, the court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidators of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution

- 31 to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(3) It shall be the duty of the person on whose application any such order was made, within seven days after the making of the order, to file with the registrar an office copy of the order, and if such person fails to do so he shall be liable on conviction to a fine not exceeding five pounds for every day during which the default continues.

32

*Directors.*

32.—If in any proceeding against a director of a company for negligence or breach of trust it appears to a court that the director is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, the court may relieve him, either wholly or partly, from his liability on such terms as the court may think proper.

33

33.—A person liable to make any payment under the provisions of the Directors' Liability Act, 1890, shall not be entitled to recover contribution from another person under section five of that Act if the person liable to make the payment was, and such other person was not, guilty of fraudulent misrepresentation.

34

[34.—This section is substituted for section three (3) of the Companies Act, 1900, and will be found printed with that Act at page 59.]

35

*Requirements as to Companies established outside the United Kingdom.*

35.—(1) Every company incorporated outside the United Kingdom which at the commencement of this Act has a place of business in the United Kingdom, and every such company which after the commencement of this Act establishes such a place of business within the United Kingdom, shall within three months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar—

- (a) a certified copy of the charter, statutes, or memorandum and articles of association, of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof ;



35

- (b) a list of the directors of the company ;
- (c) the names and addresses of some one or more persons resident in the United Kingdom authorised to accept on behalf of the company service of process and any notices required to be served on the company ;

and, in the event of any alteration being made in any such instrument or in the directors or in the names or addresses of any such persons as aforesaid, the company shall file with the registrar a notice of the alteration within such time as may be prescribed,

(2) Any process or notice required to be served on the company shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed.

(3) Every company to which this section applies shall in every year file with the registrar such a statement of its affairs as would, if it were a company incorporated in the United Kingdom and having a capital divided into shares, be required under this Act to be included in the annual summary.

(4) Every company to which this section applies, and which uses the word "Limited" as part of its name shall—

- (a) in every prospectus inviting subscriptions for its shares or debentures in the United Kingdom state the country in which the company is incorporated ; and
- (b) conspicuously exhibit on every place where it carries on business in the United Kingdom the name of the company and the country in which the company is incorporated ; and
- (c) have the name of the company and of the country in which the company is incorporated mentioned in legible characters in all bill-heads and letter paper, and in all notices, advertisements, and other official publications of the company.

(5) If any company to which this section applies fails to comply with any of the requirements of this section the company, and every officer or agent of the company, shall on conviction be liable to a fine not exceeding fifty pounds, or, in the case of a continuing offence, five pounds for every day during which the failure continues.

(6) For the purposes of this section the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation, and a share transfer or share registration office shall be deemed to be a place of business within the meaning of this section.

(7) There shall be paid to the registrar for registering

35 any document required by this section to be filed with him a fee of five shillings or such smaller fee as may be prescribed.

36

*Miscellaneous.*

36.—Notwithstanding anything contained in the statute of the Scots Parliament of 1696, chapter twenty-five, debentures to bearer issued in Scotland are declared to be valid and binding according to their terms.

37

37.—(1) For the purposes of this Act the expression “private company” means a company which by its articles—

- (a) restricts the right to transfer its shares; and
- (b) limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(2) A private company may, subject to anything contained in the memorandum or articles of association of the company, by passing a special resolution and by filing with the registrar such a statement in lieu of prospectus as the company, if a public company, would under the provisions of this Act have had to file before allotting any of its shares or debentures, together with such a statutory declaration as the company, if a public company, would under the provisions of section six of the Companies Act, 1900, have had to file before commencing business, turn itself into a public company.

(3) Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member.

(4) Wherever in the Companies Acts a minimum of seven members is required only two members shall be required in the case of a private company.

38

38.—The Joint Stock Companies Arrangement Act, 1870, shall apply to a company which is not in the course of being wound up, in like manner as it applies to a company which is in the course of being wound up, as if in that Act references to the Court having jurisdiction to wind up the company were substituted for references to the Court, and references to the liquidator were omitted therefrom, and references to the company were substituted for references to contributories of the company.

39

39.—(1) A company may by special resolution confirmed by an order of the Court modify the conditions contained in its memorandum of association so as to re-organise its

39 capital, whether by the consolidation of shares of different classes, or by the division of its shares into shares of different classes: Provided always that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority of shareholders of that class representing three-fourths of the capital of that class and confirmed in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of such class.

(2) Where an order is made under this section an office copy thereof shall be filed with the registrar within seven days after the making of the order, and the resolution shall not take effect until such a copy has been so filed.

40 40.—Section forty-four of the Companies Act, 1862, shall not apply to any life assurance company nor any other assurance company to which the provisions of the Life Assurance Companies Acts, 1870 to 1872, as to the annual statements to be made by such companies apply, with or without modification, if the company complies with those provisions.

41 41.—Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, on ceasing to act as such, and also once in every half year while he remains in possession, file with the registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as such receiver or manager file with the registrar notice to that effect, which notice shall be entered by the registrar on the register of mortgages and charges, and every such receiver or manager who makes default in complying with the provision of this section within the prescribed time shall be liable to a fine not exceeding fifty pounds.

42 42.—A licence granted by the Board of Trade under section twenty-three of the Companies Act, 1867 (which relates to associations formed for purposes not of gain), may at any time be revoked by the Board of Trade, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the company upon the register, and the company shall cease to enjoy the exemptions and privileges granted by that section. Before any such licence is revoked under this section the Board of Trade shall give notice in writing of their intention to the company, and shall afford the company an opportunity of being heard in opposition to such revocation.

43 43.—For removing doubts it is hereby declared that the

43 Commonwealth of Australia is a colony within the meaning  
of the Companies (Colonial Registers) Act, 1883.

44 44.—Section fifty-six, sub-section (2), of the Companies  
Act, 1862, shall be read and construed as if the words  
therein “one-fifth part” had been “one-tenth part,”

45 45.—An extraordinary resolution for the purposes of the  
Companies Act, 1862, and this Act, means a resolution  
which is passed in such manner as would, if it had been  
confirmed by a subsequent meeting, have constituted a  
special resolution, and section fifty-three of the Companies  
Act, 1862, shall apply in the case of an extraordinary  
resolution in like manner as that section applies in the case  
of a special resolution, with the substitution of a reference  
to the date of the passing of the extraordinary resolution  
for the reference to the date of the confirmation of the special  
resolution.

46 46.—Any writing or licence which under the Companies  
Acts, 1862 to 1900, is required to be under the hand of one  
of the principal secretaries or assistant secretaries of the  
Board of Trade may be under the hand of any person  
authorised in that behalf by the President of the Board  
of Trade.

47 47.—The Board of Trade shall cause a general annual  
report of matters within the Companies Acts, 1862 to  
1900, and this Act to be prepared and laid before both  
Houses of Parliament.

48 48.—If any person or persons trade or carry on business  
under any name or title of which “Limited” is the last  
word, such person or persons shall, unless duly incorporated  
with limited liability, be liable to a penalty not exceeding  
five pounds for every day upon which such name or title  
has been used.

49 49.—All offences under the Companies Acts made punish-  
able by any penalty may be prosecuted under the Summary  
Jurisdiction Acts.

*Note.*—Section sixty-five of the Act of 1862 is repealed,  
and this section takes its place (see Fourth Schedule  
to 1907 Act).

50 50.—The amendments specified in the Third Schedule to  
this Act, which relate to minor details, shall be made in the  
Companies Acts.

51 51.—The enactments mentioned in the Fourth Schedule  
to this Act are hereby repealed to the extent specified in  
the third column of that schedule.

52 52.—(1) This Act may be cited as the Companies Act,  
1907, and the Companies Acts, 1862 to 1900, and this Act  
may be cited together as the Companies Acts, 1862 to 1907,

52 and are in this Act referred to as the Companies Acts, and this Act shall for all purposes (including its application to Scotland) have effect as part of the Companies Act, 1900.

(2) In this Act the expression "the court" when used in relation to a company shall, unless the context otherwise requires, mean the court having jurisdiction under the Companies Acts, 1862 to 1900, to wind up the company.

(3) The provisions of this Act relating to perpetual debentures and the power of a company to re-issue redeemed debentures in certain cases, shall come into operation on the passing of this Act, and the other provisions of this Act shall come into operation on the first day of July, one thousand nine hundred and eight.

## SCHEDULES.

### FIRST SCHEDULE.

THE COMPANIES ACTS, 1862 TO 19 .  
STATEMENT IN LIEU OF PROSPECTUS.

filed by

LIMITED

pursuant to section                      of the Companies Act, 1907.

Presented for filing by

THE COMPANIES ACTS, 1862 TO 19 .  
LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal capital of the company . . . . .	£
Divided into . . . . .	Shares of £              each.
	"        "                "
	"        "                "
Names, descriptions, and addresses of directors or proposed directors	

Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash. The consideration for the intended issue of such shares and debentures.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid. 3. debentures £ 4. Consideration.
Names and addresses of (a) vendors of property purchased or acquired, or proposed to be (b) purchased or acquired by the company. Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price . £ Cash . . . £ Shares . . . £ Debentures . . £  Goodwill . . . £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, or Rate of such commission . . .	Amount paid. ,, payable.  Rate per cent.

(a) For definition of vendor, see section ten (2) of the Companies Act, 1900, as amended by this Act.

(b) See section ten (3) of the Companies Act, 1900.



Estimated amount of preliminary expenses . . . .	£
Amount paid or intended to be paid to any promoter.	Name of promoter.
Consideration for such payment	Amount £
	Consideration:
Dates of, and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which such contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	

Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance-sheets or reports of the auditors or other reports.	Nature of the provisions.
---	---------------------------

We *A.B.*, &c. secretary of the company, and *C.B.*, (A Director [or Solicitor]) of the company hereby solemnly and sincerely declare that the statements above contained are true to the best of our knowledge, information, and belief, and we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

## SECOND SCHEDULE.

### MODIFICATIONS OF SECTIONS 2, 6, AND 11.

References to a verified statement in lieu of prospectus and the filing thereof shall be substituted for references to a prospectus and the publication of a prospectus.

In section six the reference to shares offered for public subscription shall be construed as a reference to shares payable in cash.

There shall be added to sub-section (1) of section six the following paragraph:—

“(d) There has been filed with the registrar a statement in lieu of prospectus.”

The registrar shall not give such a certificate as is mentioned in sub-section (2) of section six unless a statement in lieu of prospectus has been filed with him.

## THIRD SCHEDULE.

## MISCELLANEOUS AMENDMENTS OF COMPANIES ACTS.

Enactment to be amended.	Nature of amendment.
Companies Act, 1862 (25 & 26 Vict., c. 89), s. 28	After the word "stock" there shall be inserted the words "or re-converted "stock into shares." After the word "conversion" there shall be inserted the words "or re-conversion." After the word "converted" there shall be inserted the words "or the stock re-converted."
s. 32 . . .	After the words "herein-before mentioned" there shall be inserted the words "or "any part thereof." After the word "sixpence" there shall be inserted the words "or such less sum as "the company may prescribe." After the words "hundred words" there shall be inserted the words "or fractional "part thereof."
s. 143 . . .	At the beginning there shall be inserted the words "Within one week after such "meeting." After the words "the same was held" there shall be inserted the words "The "registrar on receiving such return shall "forthwith register it."
Companies Act, 1867 (30 & 31 Vict., c. 131), s. 16	After the word "paid" there shall be inserted the words "or (as the case may "be) the reduced amount, if any, which "is to be deemed to have been paid."
Companies Act, 1879 (42 & 43 Vict., c. 76), s. 5	For the words "in cases where no such "increase of nominal capital may be "resolved upon" there shall be substituted the words "either in conjunction "with or without any such increase of "nominal capital."
s. 7 . . .	The whole section except the proviso to sub-section (5) to be repealed.

## FOURTH SCHEDULE.

## ENACTMENTS REPEALED.

Session and chapter.	Short title.	Extent of repeal.
25 & 26 Vict., c. 89	The Companies Act, 1862	Section forty-nine. In section fifty-one, the words “by at least five members.” Section sixty-five. Section one hundred and twenty- nine, from “For the purposes “of this Act” to the end of the section.
53 & 54 Vict., c. 63	The Companies (Winding-up) Act, 1890	Sub-section (2) of section twenty- nine.
63 & 64 Vict., c. 48	The Companies Act, 1900	In sub-section (3) of section two, the words “or to a company “which does not issue any in- “vitation to the public to sub- “scribe for its shares.” In section three, sub-section (3). In section six, sub-section (4) and sub-section (7) except so far as relates to companies registered before the com- mencement of this Act. In section ten, sub-section (1) and proviso (b) to sub-section (4). In sub-section (2) of section twelve, paragraph (c). Section fourteen. Section twenty-three.

**THE MATERIAL SECTIONS OF PREVIOUS ACTS WHICH  
ARE ALTERED OR REFERRED TO IN THE ACTS OF  
1900 AND 1907 OR REFERRED TO IN THE FOREGOING  
PAGES.**

**THE COMPANIES ACT, 1862.**

18.—Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited. The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned. [A certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.]

*Note.*—The words in brackets are now repealed, and the provisions of this section relating to the certificate of incorporation are repeated in and amplified by section one of Act of 1900.

26.—Every company under this Act, and having a capital divided into shares, shall make once at least in every year a list of all persons who on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary general meeting in each year the first of such ordinary general meetings, is held, are members of the company, and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:

- (1) The amount of the capital of the company, and the number of shares into which it is divided.
- (2) The number of shares taken from the commencement of the company up to the date of the summary.
- (3) The amount of calls made on each share.
- (4) The total amount of calls received.

- (5) The total amount of calls unpaid.
- (6) The total amount of shares forfeited.
- (7) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day, as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar of joint stock companies.

*Note.*—Section nineteen of the Act of 1900 and sections seven and twenty-one of the 1907 Act add further requirements to this section.

43.—Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting the property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: The register of mortgages required by this section shall be open to the inspection of any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, as respects companies registered in England and Ireland, any Judge sitting in Chambers, or the Vice-Warden of the Stannaries in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

*Note.*—This section remains in force in addition to section fourteen of the 1900 Act.

45.—Every company under this Act [and not having a capital divided into shares] shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the registrar of joint stock companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors or managers.



46.—If any company under this Act [and not having a capital divided into shares] makes default in keeping a register of its directors or managers, or in sending a copy of such register to the registrar in compliance with the foregoing rules, or in notifying to the registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty.

*Note.*—The words in brackets in both the above sections are repealed by section twenty of the Act of 1900.

[49.—A general meeting of every company under this Act shall be held once at least in every year.]

*Note.*—This section is now repealed and section twenty-four of the Act of 1907 is substituted for it.

138.—Where a company is being wound up voluntarily, the liquidators or any contributory of the company may apply to the court in England, Ireland, or Scotland, or to the Lord Ordinary on the bills in Scotland in time of vacation, to determine any question arising in the matter of such winding up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the court might exercise if the company were being wound up by the court; and the court or Lord Ordinary, in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially to such application, on such terms and subject to such conditions as the court thinks fit, or it may make such other order, or interlocutor, or decree on such application as the court thinks just.

*Note.*—By section twenty-five of the Act of 1900 applications under this section may be made by any creditor.

142.—As soon as the affairs of the company are fully wound up the liquidators shall make up an account showing the manner in which such winding up has been conducted and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators; the meeting shall be called by advertisement specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting as respects companies registered in England in the London Gazette, and as respects companies registered in Scotland in the Edinburgh Gazette, and as respects companies registered in Ireland in the Dublin Gazette.

143.—*Within one week after such meeting* the liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held. *The registrar on receiving such return shall forthwith register it*, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved; if the liquidators make default in making such return to the registrar, they shall incur a penalty not exceeding five pounds for every day during which such default continues.

*Note.*—The words in italics have been added by section fifty of the Act of 1907 and the third schedule to that Act.

161.—Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators, or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution; no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an

order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the court.

*Note.*—The effect of this section is alluded to on page 51.

[192.—A certificate of incorporation given at any time to any company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.]

*Note.*—The whole section is repealed. The provisions of this section, which relate to the certificate of incorporation, are re-enacted in fuller form in section one of the Act of 1900.

#### THE COMPANIES ACT, 1867.

[25.—Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the registrar of joint stock companies at or before the issue of such shares.]

*Note.*—The whole section is repealed. It is re-enacted in fuller form in section seven (B) of the Act of 1900.

[38.—Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors of the company or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.]

*Note.*—The whole section is repealed. It is re-enacted in fuller form in section ten of the Act of 1900.

[39.—Every company formed under the principal Act after the

commencement of this Act shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association who knowingly authorises or permits such default shall be liable to the same penalty.]

*Note.*—The whole section is repealed. It is re-enacted in fuller form in section twelve of the Act of 1900.

#### THE COMPANIES ARRANGEMENT ACT, 1870.

2.—Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the court, under the Companies Acts 1862 and 1867, or either of them, and the creditors of any such company, or any class of such creditors, it shall be lawful for the court, in addition to any other of its powers, on the application in a summary way of any creditor or liquidator, to order that a meeting of such creditors, or class of creditors, shall be summoned in such manner as the court shall direct; and if a majority in number representing three-fourths in value of such creditors, or class of creditors, present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

*Note.*—The operation of this section is enlarged by section twenty-four of the 1900 Act, and by section thirty-eight of the 1907 Act.

#### THE COMPANIES ACT, 1880.

7.—(5) If any company or member or creditor thereof feels aggrieved by the name of such company having been struck off the register, in pursuance of this section, the company, or member, or creditor may apply to the Superior Court in which the company is liable to be wound up, and such court, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off, and the

court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off.

*Note.*—The words in italics have been added by section twenty-six (2) of the 1900 Act.

THE COMPANIES (WINDING UP) ACT, 1890.

[29.—(2) The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act to be prepared and laid before both Houses of Parliament.]

*Note.*—This section is repealed and by section forty-seven of the 1907 Act the report of the Board of Trade is to be a general annual report of matters “within the Companies Acts, 1862 to 1900.”

# INDEX.

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ACCOUNTS (*See* AUDITORS)

ADVERTISEMENT OF PROSPECTUS 66

AGENT—

of Foreign or Colonial Companies 91, 92

ALLOTTEE OF SHARES—

Contract constituting title of 12, 61

Damages for irregular allotment 11, 26, 60

Repudiation of allotment by 26, 60

ALLOTMENT—

of debentures, Restrictions on 41, 60

minimum subscription 3, 59

shares 3, 59 (*See* MINIMUM SUBSCRIPTION)

Directors' liability for 11, 60

fully or partly paid 12, 61

Repudiation of 26, 60

Requirements on 11, 12, 61, 62

Restrictions on 3, 59, 60

returns to be filed 12, 62

subsequent to the first 60

ALTERATION —

of rights of shareholders 51, 76

ANNUAL GENERAL MEETING (*See* MEETING)

ANNUAL RETURNS (*See* SUMMARY, ANNUAL)

ANNUAL SUMMARY (*See* SUMMARY, ANNUAL)



## APPLICANT FOR SHARES—

Interest on application moneys 59

Rights of shareholders on irregular allotment 26, 60

## APPLICATION MONEYS FOR SHARES—

Amount of 3, 59

Return of 10, 59

## APPOINTMENT—

of auditors 30, 31 (*See* AUDITORS)directors 7, 8, 58 (*See* DIRECTORS)

## ARRANGEMENTS—

with creditors 76

members 51, 76

## ARTICLES OF ASSOCIATION—

Directors, Appointment of, in 8, 9, 58

Minimum subscription to be fixed in 3, 59

Underwriting commissions to be authorised by 34, 62

## AUDITORS—

Appointment of 30, 31, 74

Balance Sheet to be certified by 31, 75, 76

Board of Trade may appoint 31, 74

Duties of 31, 32, 75, 76.

Liabilities of 32, 77

Remuneration of 31, 74

Report to Statutory Meeting 31, 47, 68

Shareholders, under control of 30, 74

Vacancy in appointment of 31, 74

## AUSTRALIA 95

## BALANCE SHEET—

Audited statement in form of 50, 87

Commissions and discounts to appear in 82

of private Companies, need not be filed 34, 87

to be certified by auditors 31, 75

## BEARER DEBENTURE—

Validity of in Scotland 93

## BILL OF SALE—

Mortgage in the nature of 69

## BOARD OF TRADE—

- Annual report of 95
- Appointment of auditors by 31, 74
- licence of, to an association not for profit 94
- sanction of, to payment of interest out of capital 83
- signature of documents on behalf of 95

## BORROWING POWERS—

- Liabilities for exercising improperly 11, 61
- Restrictions on exercising 41, 42, 60, 61

## BROKERAGE—

- Power of Company to pay 34, 35, 62, 82

BUSINESS, COMMENCEMENT OF (*See* COMMENCEMENT OF BUSINESS)

## CALLS—

- Particulars of, in annual summary 49

## CAPITAL—

- Payment of interest out of 83
- Re-organisation of 93, 94
- Statement of, in statement in lieu of prospectus 96
  - in annual summary 49
- uncalled (*See* UNCALLED CAPITAL)

## CERTIFICATE—

- False statement in 77
- of Auditors 32, 75, 76, 77
  - incorporation of Company 57
  - registration of Mortgages 72
    - endorsement of 72
    - default of 72
  - right of Company to commence business 42, 60, 61
  - shares and debentures when to be delivered 81

CHARGES (*See* MORTGAGES AND CHARGES)

## CIRCULAR

- inviting subscriptions for shares 82

## CLASSES OF SHAREHOLDERS—

- Alteration of rights of 93, 94
- Disclosure of voting powers of 65

## COLONIAL AND FOREIGN—

Australian 95

Carrying on business in United Kingdom 91, 92

## COMMENCEMENT OF ACT OF 1907 4, 96

## COMMENCEMENT OF BUSINESS—

Certificate entitling 42, 60, 61

Illegal until minimum subscription allotted 41, 60

Liability for wrongful 11, 61

Restrictions on 41, 60, 61

## COMMISSIONS FOR UNDERWRITING—

Company may pay 34, 62

Disclosure in Prospectus of 35, 38, 39, 64

Payment of, by Vendors 24

to be entered in register of mortgages 71, 72

## COMMITTEE OF INSPECTION 89

## COMPANY—

Brokerage, Payment of 34, 35, 62, 82

Commissions paid by 34, 35, 38, 39, 62, 64

Compensation of, when wrongful allotment by Directors 11, 60

Contracts by, when provisional 42, 61

Conversion of stock into shares by 78

Dissolution of 55, 56, 90, 91

Defunct 26

Incorporation of 57 (*See* REGISTRATION OF)Meeting (*See* MEETING)

Mortgage, Default by, in registering 73

Registration of 29, 57

Certificate of 57

date of incorporation 57

list of Directors 30, 58

Requirements on 29, 57

## COMPANIES ACTS—

Various sections set out—

Act of 1862 (Sec. 18) 102

( „ 26) 102

( „ 43) 103

( „ 45) 103

COMPANIES ACTS (*continued*)—

Act of 1862 (Sec. 46)	104
( „ 49)	104
( „ 138)	104
( „ 142)	104
( „ 143)	105
( „ 161)	105
( „ 192)	106
Act of 1867 ( „ 25)	106
( „ 38)	106
( „ 39)	106
Act of 1870 ( „ 2)	107
Act of 1880 ( „ 7)	107
Act of 1890 ( „ 29)	108

COMPROMISE (on winding up) 51, 107

## CONCLUSIVE—

certificate of registration of mortgage 72

## CONSTRUCTION OF WORKS

Payment of interest out of capital during 83

## CONSENT—

of Directors to act 7, 8, 30, 58  
agent may sign 58

CONSOLIDATION OF SHARES 93, 94

## CONTRACTS—

Alteration of, prior to Statutory Meeting not allowed 14, 67  
Disclosure of, in Prospectus 39, 64  
by Directors to take shares 7, 8, 58  
Filing, for allotment of shares 12, 19, 61, 81  
made in the ordinary course of business 40, 64  
Material contracts—  
    Disclosure of 39, 64  
    Inspection of 39, 64  
    What are 25  
Provisional contracts 42, 43, 61  
Specific performance of, to take debentures 46, 86  
Trade 40, 64  
Underwriting 25, 34, 35

CONTRACTS (*continued*)—

Variation of 68

Verbal, particulars of, to be filed 81

## CONVERSION—

of stock into shares 78

## COSTS—

of application by creditors 89

enquiry by Board of Trade 83

petition 48, 68

## COURT—

Application to, in voluntary winding up 53, 89

Calling of general meeting by 88

jurisdiction over foreign companies 92

meaning of the word 96

Powers of, as to dissolution 55, 56, 90, 91

for rectification of Register of Mortgages 73

in voluntary winding-up 89

sanction to scheme of arrangement 51, 76

## CREDITORS—

Application to the Court by 76

to restore Company's name to register 77

Arrangements with 76

Contingent or prospective 90

Inspection of copies of Mortgages 73

Mortgage Register 28, 45, 72, 73

Meeting of, in voluntary liquidation 53, 89

Secured and unsecured 27, 28, 29

## DAMAGES—

for wrongful allotment of shares 11, 26, 60

## DATE—

of publication of Prospectus 36, 63

incorporation 57

commencement of Act of 1907 4, 96

DEBENTURES (*See* MORTGAGES)—

- Allotment of, restrictions on 41, 42, 43, 60, 61
- Certificate of registration of 15, 16, 73
  - debenture stock when to be ready 81
- Contract to take, specific performance of 46, 86
- Definition of 78
- Delivery of deed to registrar 71
  - where wrongful 16, 73
- Deposit of, to secure advance 85
- Disclosure of underwriting commission 39, 64
- Holding of, not an interest in land 71
- Perpetual 85
- Prospectus for issue of 37, 63
- Redeemed, how kept alive 85, 86
  - re-issue of 85, 86, 96
- Registration of 71
  - mortgage to secure issue of 69

## DEBENTURE HOLDERS—

- may require copies of trust deed 86, 87
- Inspection of balance-sheets and reports by 29, 88
- Register of 86 (*See* REGISTER)

## DEBENTURE STOCK CERTIFICATE—

- Certificates of, when to be ready 81
- Wrongful delivery of 15, 16, 73, 74

DECLARATION (*See* STATUTORY DECLARATION)—

## DEFERRED SHARES—

- Disclosure of 37, 63

## DEPOSIT—

- of debentures to secure advances 85
- negotiable instrument to secure advance 70, 71

## DIRECTORS—

- acting when unqualified 7, 8, 9, 10, 58, 59
- Agent of, may sign 58
- Appointment of, by articles 7, 8, 9, 58
- Changes to be notified to Registrar 21, 50, 74
- Consent to act as 8, 9, 58
- Contribution between 91



DIRECTORS (*continued*)—

- Defences by 13, 59
- Definition of 78
- Disclosure by, when interested in promotion 13, 39, 65
- Disqualification of 7, 8, 9, 58
- Liabilities of—
  - acting when unqualified 10, 59
  - compensation to Company for wrongful allotment 11, 60
  - compensation to allottee of shares 11, 60
  - convening requisitioned meetings 15, 69
  - convening Statutory Meeting 14, 47, 67
  - false statements 17, 77
  - filing contracts 12, 62, 81, 82
  - filing report to Statutory Meeting 14, 67, 68
  - filing return of allotment of shares 12, 62
  - interest on application money for shares 59
  - Prospectus misrepresentations 13, 67
  - registration of mortgages 15, 16, 73, 103
  - return of application moneys 11, 59
  - wrongful commencement of business 11, 61
  - wrongful exercising borrowing powers 11, 61
  - wrongful delivery of debentures 15, 51, 52
- List of, for Registrar 21, 30, 50, 58, 74
- Member of firm as 39, 40, 65
- Names, addresses, and descriptions in Prospectus 37, 63
- Not to be appointed auditors 74
- Payment for shares by 60
- Powers of, to alter agreements restricted 14, 67
  - pay commissions 34, 35, 62
- Promoter or Vendor may be 40
- Prospectus, Disclosures in 13, 14, 66, 67
  - Filing of 12, 13, 63, 81
  - Signature of 12, 63
- Re-appointment of, when invalid 10, 59
- Relief of honest 17, 91
- Remuneration of 37, 63
- Report prior to Statutory Meeting 14, 47, 67, 68
- Restrictions on, naming in Prospectus 7, 8, 58

DIRECTORS (*continued*)—

- Signature of, to balance-sheet 75
- Prospectus 63
- statement in lieu of Prospectus 80

## DISCLOSURE IN PROSPECTUS—

- Contracts in ordinary course of business 40, 64
- Contracts when “material” 25, 39, 40, 64
- Director’s qualification 37, 63
- Director’s interest in promotion and property 13, 39, 65
- Director’s remuneration 37, 63
- Promoter, amount payable to 5, 39, 64
- Shares fully or partly paid for otherwise than in cash 38, 64
- Underwriting commission 35, 38, 39, 64
- Underwriting contracts 35, 38, 39, 64

## DISCOUNT—

- on debentures must appear in annual summary 82
- Entry of, in register of mortgages 71

## DISSENTIENTS—

- Buying out, in reconstruction 51, 76

## DISSOLUTION—

- Order deferring or setting aside 55, 56, 90, 91
- must be filed with Registrar 56, 91

## DIVIDENDS—

- Payment of capital out of 83

## DUTIES—

- of Secretary 18, 19, 20, 21 (*See also* SECRETARY)

## EMPLOYEES—

- Exclusive of, when reckoning number of members for private company 33, 34, 93

EXTRAORDINARY GENERAL MEETING (*See* MEETING)

## EXTRAORDINARY RESOLUTIONS—

- to be printed and registered 54, 95

## FALSE STATEMENTS—

- Penalties for 17, 77

## FEES—

part of preliminary expenses 39

## FILING—

contracts constituting title to shares 12, 19, 61, 81

Prospectus 36, 63, 81

## FINAL MEETING—

Return of holding of 95, 100, 104, 105

FINES (*See* PENALTIES)

## FIRM 38, 39, 64, 65

## FIRST MEETING OF CREDITORS 53, 89

## FIXED ASSETS 87

## FLOATING CHARGE—

Winding up, effect of, on 46, 84, 85

FOREIGN COMPANIES (*See* COLONIAL COMPANIES)

## FOUNDERS' SHARES—

Holders' interests in, to be stated in Prospectus 37, 63

Number of, to be stated in Prospectus 37, 63

## FRAUD—

Right of contribution in case of 91

## FULLY PAID SHARES—

Contracts respecting, to be filed 12, 19, 61, 81

GENERAL MEETING (*See* MEETING)

## GOODWILL—

Amount for, to be stated in Prospectus 38, 64  
in statement in lieu of 97

## GUARANTEE—

Companies limited by, Amendment affecting 77

## INCORPORATION—

Certificate of, its effect 57

## INDEX—

of Mortgages kept by Registrar 73

## INDIAN RAILWAYS ACT, 1894 84

## INSOLVENCY OF COMPANY 90

## INSPECTION—

- of balance-sheets and reports 75
- copies of Mortgages kept by Company 73
- list of shareholders at Statutory Meeting 15, 47, 68
- material contracts 39, 64
- register of Mortgages at Somerset House 73
  - kept by the Company 86
- debenture holders 86

## INTEREST—

- Directors' liability to pay 59
- Payment of, out of capital 83
- in land, holding debentures not an 71

## INVITATION TO SUBSCRIBE—

- by notice, circular, or advertisement 78
- Second or subsequent 38, 63
- to existing share or debenture holders 66
- to public to take shares 63, 78 (*See also PROSPECTUS*)

## IRREGULAR—

- allotment of shares 11, 26, 60

## ISSUE—

- of certificates, time for 81
- Prospectus 36, 63
  - first 59

## JOINT HOLDERS 93

## “KNOWINGLY AND WILFULLY” 73, 77

## LACHES—

- Effect of, on wrongful allotment 26, 60

## LEASE—

- of property from vendor 65

## LENDER—

- on Mortgage registered under Companies Act, 1862 44, 45, 103
- under Companies Act, 1900 44, 45, 69, 70, 71

## LIABILITY—

- Contingent, reckoning of, on petition to Wind up 90
- of directors (*See* DIRECTORS, LIABILITY OF)
  - promoters (*See* PROMOTERS „ )
  - secretary (*See* SECRETARY „ )
  - solicitors (*See* SOLICITORS „ )
  - vendors (*See* VENDORS „ )

## LIFE ASSURANCE COMPANY—

- Exemption of 94

## LIMITED—

- Use of word by Colonial and Foreign Companies 92
  - on revocation of licence of Board of Trade 94
  - penalty for improper use of word 33, 95

LIQUIDATOR (*See* also WINDING UP)—

- of defunct companies 76
- Unregistered, charge void against 45, 70
- Voluntary—
  - must convene meeting of creditors 52, 53, 89
  - Notification of appointment by 52, 89
  - Removal of 89
  - Time for making return of final meeting 105

## LIST—

- of Directors to be delivered on registration 30, 58
- Directors to be filed 17, 21, 50, 103
- shareholders with their holdings 20, 47, 68

## MAJORITY—

- Alteration of rights of class by 93, 94

## MANAGER 22, 72, 73, 74, 84, 87

- Name of, in Directors' Report 68

## MATERIAL CONTRACTS—

- Description of 39, 64
- Disclosure of, in Prospectus 39, 64
- Inspection of 39, 64

## MEETING—

- Annual General 88
  - Appointment of auditor at 75, 76
  - Attendance by a Company at 88
  - Default of holding 88
  - Reading of auditors report at 75
- Extraordinary General, by requisition 69
- Final, in Winding up 90, 91
- of creditors 52, 53, 89
- Statutory (*See* STATUTORY MEETING)

## MEMBERS—

- Annual List of 20, 49, 102
- List to be produced at Statutory Meeting 47, 68
- Rights of, in winding up 51, 76, 105
  - at Statutory Meeting 47, 48, 84
- Right to inspect copies of Mortgage 73
  - Company's Register of Mortgages 44, 45, 103
  - Registrar's Register of Mortgages 44, 45, 69, 70, 71
- requisition a meeting 26, 69 (*See also* SHARE-HOLDERS)

## MEMORANDUM OF ASSOCIATION—

- Minimum subscription may be fixed by 3, 59
- Modification of, to reorganise capital 93
- Prospectus must include 37, 63
  - when not necessary 66
- Registration of, with Directors' names 58
- Signature of, by Director for qualification shares 8, 9, 58
- Subscribers to, in public and private company 93

## MINIMUM SUBSCRIPTION—

- Amount to be fixed 3, 59
- How calculated 59
- Definition of 59
- Effect if none fixed 3, 59
  - of allotment of less than 10, 11, 26, 59
- Failure to procure 60
- Prospectus, must be stated in 38, 63

## MISREPRESENTATION—

in Prospectus 13, 66

MORTGAGES AND CHARGES (*See also REGISTER*)

Copies to be kept by Company 20, 73

Production of 20, 73

Default in registration of 28, 69, 70, 71

Liability of Directors for 15, 16, 73

Secretary for 18, 73

Index of, to be kept by Registrar 73

Memorandum of satisfaction of 73

Register of, kept by Company 19, 27, 28, 44, 45, 103.

kept by Registrar 19, 27, 28, 44, 45, 69, 70

Statement of total secured indebtedness 84

Satisfaction of entry of 73

Total to be included in annual summary 74

When to be registered 27, 28, 69, 70

## NEGOTIABLE INSTRUMENT—

Deposit of, to secure advance 70, 71

## NOTICE—

inviting subscriptions for shares 82

of adjourned Statutory Meeting 48

of appointment of voluntary liquidation 89

Service of, on agent of Foreign or Colonial Company 91, 92

## NUMBER—

of members in a Private Company 93

OFFICERS OF COMPANY (*See DIRECTORS, SECRETARY, AND MANAGER*)

## PENALTIES—

on Directors (*See DIRECTORS, LIABILITIES OF*)

Secretary (*See SECRETARY* „ )

Solicitor (*See SOLICITOR* „ )

Prosecution for 95

## PETITION TO WIND-UP 68

by contingent creditor 90



## POLL—

demand of 88

## PREFERENCE SHAREHOLDERS—

Receipt and inspection of balance-sheets and reports by 88

## PREFERENTIAL PAYMENTS 90

Date for calculation of 90

## PRELIMINARY EXPENSES—

Estimate in Prospectus 39, 64

Report to Statutory Meeting 14, 67

Illustration of 39

Provision for 10, 11

## “PRESCRIBED”—

Definition of 78

## PRIVATE COMPANY 33, 93

Articles of Association of 93

No statutory report required from 88

Number of members in 93

signatories to Memorandum and Articles 93

reports and balance-sheet, receipt and inspection of 88

Statutory Meeting of 48, 88

Transfer of shares of 93

turning into Public Company 93

What is a 33, 34

PROFITS, DISCLOSURE OF (*See* PROSPECTUS AND PROMOTER)

## PROMOTER—

Amount payable to, disclosed in Prospectus 5, 39, 64

Director can be 40

Liability of, for Prospectus 7, 66

failure to file Prospectus 81

false statements 7, 77

Profits of 5, 6

Underwriting commission, payment of, by 35, 36

## PROPERTY—

Disclosure about purchase of 38, 64

taken on lease 65

PROSPECTUS (*See also* STATEMENT IN LIEU OF PROSPECTUS)—

- Advertisement of 66
- alterations by Act of 1907 63
- Contents of 37, 38, 39, 40, 63, 64, 65
- Date of publication of 36, 63
- Definition of 78
- Disclosure (*See* DISCLOSURE)
- Filing of 36, 63
- Foreign or Colonial Company 92
- Issue of 36, 63
- Misrepresentations in 13, 66, 67
- Naming Directors in 7, 9, 37, 53
- Publication of 36, 63
- Signature of 36, 63
- Waiver clause in, now void 40, 66

## PROVISIONAL—

- Contracts to be, when made prior to right to commence business 42, 43, 61

## PURCHASE MONEY—

- Amount of, to be stated in Prospectus 23, 38, 64
- Consequence if not fully paid 23, 24, 65

## PUBLIC ISSUE—

- By Private Company, prohibition of 93
- Companies not making, requirements for 80, 81, 82
- Second or subsequent 63
- What is not a 65

## QUALIFICATION—

- of Directors 8, 9, 58, 59
  - acquired from Company 8, 58
  - consequence of default in holding 10, 58, 59
  - Payment for 8, 58
  - Penalty for acting without 10, 59
  - Time when to be acquired 8, 10, 58, 59

## RE-APPOINTMENT OF DIRECTORS—

- when invalid 10, 58

## RECEIVERS AND MANAGERS—

- Accounts of, to be filed 53, 94
- ceasing to act 53, 94
- Notification of appointment 84, 94
- Penalties for default 84, 94

## RECONSTRUCTION OF COMPANY—

- Minority, rights of 51, 52, 76, 105, 107
- Schemes for 51, 52, 76, 105, 107

## RECONVERSION OF STOCK INTO SHARES 78

## RECTIFICATION OF REGISTER—

- Court can order 73

## REGISTER—

- of debenture holders 44, 86
  - Copies of 86
  - Inspection of 45, 86
- of Directors—
  - Copy to be sent to Registrar 21, 74, 103, 104
- of Mortgages at Company's office—
  - Default in keeping 20, 103
  - Effect of non-registration 45
  - Inspection of 103
  - Particulars to be entered in 103
- of Mortgages at Somerset House—
  - Certificate of registration 72
  - Contents of 69
  - Default of registration 15, 72
  - Effect of non-registration 28, 45
  - Foreign mortgages 70
  - Inspection of 27, 28, 44, 45, 72, 73
  - Particulars to be supplied 19, 72
  - Receiver, notice of ceasing to act 94
  - Rectification of 73
  - Satisfaction, entry of 73
  - Secretaries duties in respect of (*See* SECRETARY)
  - Secured indebtedness, total outstanding 16, 84
  - What mortgages must be included 69, 70

"REGISTERED," DEFINITION OF 78

REGISTRAR OF JOINT STOCK COMPANIES—

- Certificate by, of incorporation of Company 57
  - right to commence business 41, 60
  - registration of mortgages 16, 72
- Directors, Copy of Register of, to be sent to 16, 17, 74, 103, 104
  - Consent to act to be filed with 8, 58
  - Contract to take qualification shares 8, 9, 58
- Prospectus to be filed with 36, 63
- Register of Mortgages to be kept by 44, 45, 69, 70
- Report to Statutory Meeting to be filed with 47, 68
- Return to, of shares allotted 11, 12, 61, 62
- Striking Company's name off Register 76, 107

REGISTRATION OF COMPANY (*See* COMPANY)

REGISTRATION—

- of Mortgages 44, 45 (*And See* REGISTRATION OF MORTGAGES)
  - certificate of 16, 72
  - colonial and foreign companies 91, 92

REMOVAL OF AUDITORS 74

REMUNERATION—

- of auditor 74
  - Directors to be stated in Prospectus 37, 63

REPEALS—

- by Act of 1900 79
  - 1907 101

REPORT—

- Auditors 75, 76
  - Inspection of 75
  - Debenture holders rights to obtain 88
- to be sent out before Statutory Meeting 47, 67
- certified by auditors 31, 68
- certified by Directors 67
- Default in filing 14, 68
- Private company need not 38
- Time for sending out 47, 67

REPORT (*continued*)—

- False statements in 77
- Preference shareholders rights to obtain 88
- of Board of Trade 95

## REQUISITIONS—

- for Extraordinary Meeting 26, 69

## RESCIND—

- allotment, Power to 26, 60

## RESOLUTIONS—

- at Statutory Meeting 47, 48, 67, 68
  - under voluntary winding up 53, 76, 89
- RETURN OF SHARES ALLOTTED 11, 62 (and *See* ALLOTMENT, REGISTRATION)

## SATISFACTION—

- Entry of, on Mortgage Register 73

## SCOTLAND—

- Application of Act of 1900 to 79
- Bearer Debentures, validity of 93
- Registration of Mortgages, provisions not to apply to 79
- Statement of total of Mortgages, etc., in annual summary 87

## SECRETARY, DUTIES OF—

- as to allotment of shares 19
  - copies of mortgage, keeping 20
  - Directors, register of 21
  - mortgage, registration of 19
  - Prospectus, signature by Directors and filing 19
  - return of allotment of shares 19
  - Statutory Meeting 19
- Summary (Annual) for Registrar 20

## SECRETARY, LIABILITIES OF—

- Failure to file Prospectus 18
  - issue certificates of shares 81
  - debentures or debenture stock 81
  - register mortgages 72
  - total of secured indebtedness 84
- False statements 77

SECRETARY, LIABILITIES OF (*continued*)—

- Filing contracts for issue of shares 61, 62
  - returns of allotments of shares 61, 62
- Mortgages, registration of 73, 74
- Unlawful commencement of business 61
  - exercise of borrowing powers 61

## SECURED—

- indebtedness, statement of total 84

## SERVICE—

- of notices and process on colonial and foreign companies 92

## SHARE CERTIFICATE—

- When to be ready for delivery 81

## SHARES—

- Allotment of 3, 59
- Amount payable on application 3, 59
- Conversion of stock into 78
- Directors' qualification 8, 9, 58, 59
- fully or partly paid, Allotment of 11, 12, 61, 62
- Disclosure in Prospectus of 38, 64

## SHAREHOLDERS—

- Further issue to 66
- Joint 93
- List of, in annual summary 49, 102
  - at Statutory Meeting 47, 67
- Number of, in private company 93
- Receipt and inspection of balance-sheets, etc. 75
- Right to apply to Court to wind up Company 26, 48, 68
  - convene meeting 48, 68
  - damages against Directors 26, 60
  - repudiate allotment 26, 60
- Their position as affected by the Acts 25, 26, 27

## SIMULTANEOUS—

- allotment of shares and debentures 43, 61

## SOLICITORS—

- Liable for false statements 29, 30, 77
- Statutory declaration of fulfilment of registration requirements 29, 57

SOLICITORS (*continued*)—

- Responsibility on applying to register Company 30
  - for commencement of business 30, 61
  - exercising borrowing powers 30, 61

## SPECIAL RESOLUTION—

- Demand of poll on 88

## SPECIFIC PERFORMANCE—

- of contract to take debentures 46, 86

## STAMP DUTIES—

- on particulars of contract of allotment 81
- on re-issue of debentures 86

## STATEMENT—

- Annual, by colonial or foreign companies 92
- False 77

STATEMENT IN LIEU OF PROSPECTUS (*See also* PROSPECTUS)—

- By whom to be signed 80
- Contents of 80, 96, 97, 98, 99
- Filing 80
  - more than one year after commencing business 58
- Form of 96 to 99
- Private company exempted from 34, 81
- When required 36, 80

## STATUTORY DECLARATION—

- of compliance with requirements for registration 29, 30, 57
- by whom to be made 29, 30
- of compliance with requirements prior to commencement of business 41, 60, 61

## STATUTORY MEETING—

- Adjournment of 48, 68
- Contract not to be altered before 14, 67
- Directors must hold 14, 47, 48, 67
  - within what time 14, 47, 67
- Nature and power of adjourned meeting 48, 68
- Objects of 48, 68
- Report of Directors to be sent to shareholders 47, 67
- Shareholders' rights at 25, 47, 48, 68
- To what Companies applicable 47, 67



## SUBPURCHASER—

Where Company is 38, 64

## SUMMARY, ANNUAL—

Additional particulars required by 1907 Act 50, 82, 87

Contents of 49, 50

Directors' names and addresses to be stated in 50

must distinguish shares issued for cash 49

state Company's indebtedness 50

Private Company 33, 50, 87

Signature of 50, 74

Statement of discounts and commissions in 50, 82

## TITLE—

of allottee, Contract constituting, to be filed 11, 12, 61, 62

## TRADE CONTRACTS 40, 64

## TRANSFER—

of debentures to nominee of the Company 85

of shares, Private Company must restrict 93

## TRUST DEED FOR DEBENTURES—

Delivery of, to registrar 71

Penalty for refusing copy or inspection 87

Right of debenture holder to a copy 86, 87

## UNCALLED CAPITAL—

Mortgage of, must be registered 69

## UNDERWRITING—

Company may pay commission for 34, 62, 82

Conditions of payment of commission 24, 34, 35

Contracts by Vendor or promoter valid 24

Disclosure of contracts for 34, 35, 38, 39, 64

rate of commission in Prospectus 34, 35, 39, 64

Payment of by Vendors and promoters 24, 82

## VALUATION—

of fixed assets 87

## VENDOR—

Amount of consideration to be stated in Prospectus 23, 24,  
38, 64

Description of 23, 24, 65

Director may be 40

Names and addresses to be stated in Prospectus 23, 38, 64

Underwriting commissions may be paid by 24

## VERBAL CONTRACTS—

Particulars of, to be filed 81

VOLUNTARY WINDING-UP (and *See* WINDING-UP)

Creditor may apply to the Court in 76

Creditors, meeting of, in 53, 89

Reconstruction schemes in 51, 76

## WAIVER CLAUSE—

of requirements in Prospectus void 40, 41, 66

WINDING-UP (and *See* LIQUIDATOR)

Court may order 48, 68

## Dissolution—

order deferring date of 90

order declaring void 90, 91

Effect of, on floating charge 84, 85

Preferential payments in 90

Registration of resolution for 95

Stay of proceedings in 90

Striking defunct company off register 76

13

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# INDEX.

	PAGE		PAGE
<b>Arbitrage—</b>		<b>Clerks (<i>continued</i>)—</b>	
Deutsch . . . . .	13	Kennedy (Stockbrokers) . . . . .	7
Willdey's American Stocks . . . . .	25	Mercantile Practice (Johnson) . . . . .	17
<b>Arbitration—</b>		Merchant's . . . . .	8
London Chamber of . . . . .	24	School to Office . . . . .	8
Lynch, H. Foulks . . . . .	19	Solicitor's . . . . .	17
Rudall, A. R. . . . .	6	Do., Part II. . . . .	17
<b>Banking—</b>		<b>Correspondence (Commercial)—</b>	
Anecdotes . . . . .	10	Martin (Stockbrokers) . . . . .	7
Banks of the Clearing House . . . . .	16	Coumbe . . . . .	12
Banks, Bankers and Banking . . . . .	22	<b>Counting-house—</b>	
Barton's Questions on Banking . . . . .	10	Cordingley . . . . .	12
Bibliography (Bank of England) . . . . .	25	<b>County Court—</b>	
Easton's Banks and Banking . . . . .	13	County Court Practice Made	
Easton's Work of a Bank . . . . .	13	Easy . . . . .	12
English and Foreign (Attfield) . . . . .	10	Jones . . . . .	17
Examination Questions, Arith-		<b>Currency and Finance—</b>	
metic and Algebra . . . . .	20	Aldenharn (Lord) . . . . .	9
Half-yearly Balance Sheets . . . . .	10	Barclay (Robert) . . . . .	10
Howarth's Clearing Houses . . . . .	16	Clare's Money Market Primer . . . . .	11
Hutchison's Practice of Banking . . . . .	16	Cobb . . . . .	12
Journal of Institute of Bankers . . . . .	17	Cuthbertson . . . . .	12
Legal Decisions affecting Bankers . . . . .	22	Del Mar's History . . . . .	13
Questions on Banking Practice . . . . .	23	Del Mar's Science of Money . . . . .	13
Scottish Banking . . . . .	17	Gibbs, Hon. H., Bimetallic	
Smith's Banker and Customer . . . . .	25	Primer . . . . .	15
<b>Bankruptcy—</b>		Indian Coinage and Currency . . . . .	22
Duckworth's Trustees . . . . .	9	Poor (H. V.) The Money Ques-	
McEwen (Accounts) . . . . .	19	tion . . . . .	23
Stewart (Law of) . . . . .	7	<b>Dictionaries—</b>	
<b>Bills of Exchange—</b>		Cordingley's Commercial . . . . .	12
Kölkenbeck (Stamp Duties on) . . . . .	18	Cordingley's Stock Exchange	
Loyd's Lectures . . . . .	18	Terms . . . . .	12
Smith (Law of Bills, etc.) . . . . .	6	French Abbreviations . . . . .	18
Watson's Law of Cheques . . . . .	26	Milford's Mining Terms . . . . .	21
<b>Bimetallicism—</b>		<b>Directors—</b>	
List of Works . . . . .	28, 29	Pulbrook (Liabilities and Duties) . . . . .	23
<b>Book-keeping—</b>		<b>Exchanges—</b>	
Carr (Investors) . . . . .	7	Brazilian Exchanges . . . . .	26
Donald's Mining Accounts . . . . .	13	Clare . . . . .	13
Down to Date (Munro) . . . . .	21	Goschen . . . . .	15
Harlow's Examination Questions . . . . .	15	Norman's Universal Cambist . . . . .	21
Holah's Double Entry . . . . .	8	Tate's Modern Cambist . . . . .	25
Mercer's Indian Currency . . . . .	20	<b>Exchange Tables—</b>	
Jackson's Book-keeping . . . . .	16	American Exchange Rates . . . . .	9
Johnson's Book-keeping and Ac-		Dollars or Taels and Sterling . . . . .	14
counts . . . . .	16	Eastern Currencies . . . . .	18
Johnson's Mercantile Practice . . . . .	16	Garratt (South American) . . . . .	14
Killik's Stock Exchange Ac-		Koscky (Russian) . . . . .	17
counts . . . . .	17	Lecofire (French) . . . . .	18
Seebohm's (Theory) . . . . .	8	„ (Austria and Holland) . . . . .	18
Sheffield (Solicitors) . . . . .	24	Mercer (Indian) . . . . .	20
Van de Linde . . . . .	26	Schultz (American) . . . . .	24
Warner (Stock Exchange) . . . . .	26	„ (German) . . . . .	24
<b>Clerks—</b>		<b>Insurance—</b>	
Commercial Efficiency . . . . .	14	Fire Insurance Principles and	
Corn Trade . . . . .	23	Finance . . . . .	17
Counting-house Guide . . . . .	12	Short-Term Table . . . . .	25
First Years of Office Work . . . . .	12		

	PAGE		PAGE
<b>Interest Tables—</b>		<b>Law (Various Subjects) (continued)—</b>	
Bosanquet . . . . .	11	Lawyers and their Clients . . . . .	18
Crosbie and Law (Product) . . . . .	12	Licensing Law . . . . .	19
Cummins' $2\frac{3}{4}$ per cent. . . . .	12	Magistrates' Handbook . . . . .	14
Decimal Interest . . . . .	25	Marine Insurance . . . . .	13
Gilbert's Interest and Contango . . . . .	15	Maritime Law . . . . .	24
Gumersall . . . . .	15	Master Mariners' Legal Guide . . . . .	24
Ham (Panton) Universal . . . . .	15	Mortgages . . . . .	4
Indian Interest (Merces) . . . . .	20	My Lawyer . . . . .	21
Lewis (Time Tables) . . . . .	18	Patent Law and Practice (Emery) . . . . .	14
Oppenheim's Universal . . . . .	21	Powers of Attorney and Proxies . . . . .	19
Rutter . . . . .	24	Property Law (Maude) . . . . .	20
Schultz . . . . .	24	Small Holdings Act . . . . .	4
Wilhelm (Compound) . . . . .	26	Solicitors' Forms (Charles Jones) . . . . .	5, 17
<b>Investors (see also Stock Exchange</b>		Thames River Law . . . . .	9
<b>Manuals)—</b>		Title Deeds . . . . .	25
Birk's Investment Ledger . . . . .	10	Trade Union Law . . . . .	9
Capital and Investment . . . . .	5	<b>Legal and Useful Handy Books—</b>	
Investment Profit Tables . . . . .	27	List of . . . . .	6-9
Houses and Land . . . . .	8	<b>Maritime Codes—</b>	
How to Invest Money . . . . .	8	Germany . . . . .	10
<b>Joint-Stock Companies—</b>		Holland and Belgium . . . . .	22
Analysis of Modern Balance Sheet . . . . .	19	Italy . . . . .	22
Company Frauds Abolition . . . . .	24	Spain and Portugal . . . . .	22
Company Management . . . . .	4	<b>Mining—</b>	
Companies Acts 1862-1907 . . . . .	15	Accounts of G. M. Cos. . . . .	13
Common Company Forms . . . . .	23	Gabbott's How to Invest in Mines . . . . .	14
Handy Book on the Law . . . . .	23	Milford's Dictionary of Mining	
Pulbrook's Responsibilities of		Terms . . . . .	21
Directors . . . . .	23	Russell's Mining Manuals . . . . .	24
Reid's Companies Acts, 1900 and		<b>Miscellaneous—</b>	
1907 . . . . .	5	Arithmetic and Algebra . . . . .	20
Revised Table A . . . . .	24	Author's Guide . . . . .	27
Secretary's Everyday Guide . . . . .	5	On Compound Interest and An-	
Simonson's Companies Acts, 1900		nuities . . . . .	25
and 1907 . . . . .	24	Constable's (A) Duty . . . . .	19
Simonson's Debentures and De-		Copper, a Century of . . . . .	11
benture Stock (Law of) . . . . .	24	Cotton Trade of Great Britain . . . . .	14
Simonson's Reconstruction and		Dynamics of the Fiscal Question . . . . .	19
Amalgamation . . . . .	25	Elgie's Commercial Efficiency . . . . .	14
Smith's Joint-Stock Companies,		Elgie's Metric Ready-Reckoner . . . . .	14
1862-1907 . . . . .	6	Elgie's Wages Tables, 55½ hrs. . . . .	14
<b>Law (Various Subjects)—</b>		Gresham, Sir Thomas (Life of) . . . . .	11
Abridgment of the Law (Folk-		Ham's Customs Year Book . . . . .	15
ard) . . . . .	14	Ham's Inland Revenue Year Book . . . . .	15
Agricultural Holdings' Act, 1906 . . . . .	6	His Lordship's Whim . . . . .	26
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Commercial Law . . . . .	21	Lloyds' Brokerage and Discount	
Copyright Law . . . . .	11	Card . . . . .	18
Death Duties . . . . .	10	Mirabeau and Gambetta . . . . .	22
Divorce, Law of . . . . .	6	Mortgages (Law of) . . . . .	4
Evidence in Brief . . . . .	18	Police Officers' Guide . . . . .	22
Factors (Law relating to) . . . . .	10	Port of London Act, 1903 . . . . .	4
First Elements of Legal Procedure . . . . .	10	Public Meetings . . . . .	26
Foreigners and Foreign Cor-		Ratepayer's Guide . . . . .	16
porations . . . . .	14	Rates, Taxes, etc. . . . .	5
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General Average . . . . .	13	Schedule D of Income Tax . . . . .	8
High Court Practice . . . . .	22	Wilson's Equivalents . . . . .	26
Landlord and Tenant . . . . .	9	X Rays in Freemasonry . . . . .	12

	PAGE		PAGE
<b>Money Market</b> ( <i>see</i> Currency and Finance).		<b>Stock Exchange Manuals, etc.—</b>	
<b>Pamphlets</b> . . . . .	27	Anecdotes . . . . .	10
<b>Prices—</b>		Contango Tables . . . . .	15
Mathieson (Stocks) . . . . .	20	Cordingley's Guides . . . . .	12
<b>Railways—</b>		Higgins, Leonard, The Put-and-Call . . . . .	16
American and British Investors .	26	Houston's Canadian Securities .	16
Argentine . . . . .	17	How to Read the Money Article	13
Investment and Speculation in		Investor's Ledger . . . . .	20
Home Rails . . . . .	25	Investors' Tables, Permanent or	
Mathieson's Traffics . . . . .	19	Redeemable Stocks . . . . .	16
Poor's Manual (American) . . . .	23	Key to the Rules of the Stock	
Railroad Report (Anatomy of a)	27	Exchange . . . . .	11
Railway Traffic Law . . . . .	9	Laws and Customs (Melsheimer)	20
Traders and Railways (the		Le Stock Exchange . . . . .	11
Traders' Case) . . . . .	6	Options (Castelli) . . . . .	11
<b>Ready Reckoners</b> ( <i>see also</i> Exchange		Poor's American Railroad Manual	23
Tables, Interest, etc.)—		Redeemable Stocks (a Diagram)	10
Buyers and Sellers' (Ferguson) .	8	Registration of Transfers . . . .	14
Commission and Brokerage . . . .	21	Robinson (Share Tables) . . . .	23
Elgie's Metric . . . . .	14	Rules and Usages (Stutfield) . .	25
Elgie's Wages . . . . .	14	Willdey's American Stocks . . . .	26
Ingram (Yards) . . . . .	16	Yield Tables . . . . .	25
Kilogrammes and Pounds . . . . .	26	<b>Tables</b> ( <i>see</i> Exchange Tables, Inter-	
Kinmond's Universal Calculator	17	est Tables, Ready Reckoners,	
Redeemable Stocks (Mathieson)	20	and Sinking Fund and Annuity	
Merces (Indian) . . . . .	20	Tables, etc.).	
Robinson (Share) . . . . .	23	<b>Telegraph Codes—</b>	
<b>Sinking Fund and Annuity Tables—</b>		Ager's (list of) . . . . .	29, 30
Booth and Grainger (Diagram) .	10	Miscellaneous (list of) . . . . .	30, 31
Dougharty's . . . . .	13	The Premier Code . . . . .	32
Hughes . . . . .	16	<b>Trustees—</b>	
Nash's Sinking Fund and Re-		Investment of Trust Funds . . . .	7
demption Tables . . . . .	21	Judicial Trustees Act, 1896 . . .	17
<b>Speculation</b> ( <i>see</i> Investors and		Marrack's Statutory Trust In-	
Stock Exchange).		vestments . . . . .	19
		<b>Wilson's Legal and Useful Handy</b>	
		<b>Books List</b> . . . . .	6-9

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